UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

PURDUE PHARMA L.P., et al., Case No. 19-23649-rdd

(Jointly Administered)

Debtors.

- x

United States Bankruptcy Court

300 Quarropas Street

Room 147

White Plains, NY 10601

March 9, 2022

1:05 p.m.

B E F O R E :

HON ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

HEARING re Notice of Agenda for March 9 and 10, 2022 Hearing at 1PM (ECF #4466)

HEARING re Opposition Limited (related document(s)4410, 4411) filed by Allen Joseph Underwood II on behalf of Certain Canadian Municipality Creditors and Canadian First Nation Creditors. (ECF #4487)

HEARING re Response to Motion to Approve Settlement Term Sheet (related document(s)4410) filed by Todd E. Phillips on behalf of Multi-State Governmental Entities Group. (ECF #4486)

HEARING re Objection to Motion to Approve Settlement Terms (related document(s)4410) filed by Hunter J. Shkolnik on behalf of Lake County, Trumbull County. (ECF #4485)

HEARING re Objection to Motion U.S. Trustee's Opposition and Reservation of Rights to Debtors' Motion for an Order Authorizing and Approving Settlement Term Sheet (related document(s)4410) filed by Paul Kenan Schwartzberg on behalf of United States Trustee. (ECF #4484)

HEARING re Objection to Motion to Approve Settlement Term Sheet (related document(s)4410) filed by Hunter J. Shkolnik

on behalf of Nassau County. (ECF #4483)

HEARING re Motion to Approve / Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF #4410)

HEARING re Motion to Shorten Time / Debtors' Ex Parte Motion for Entry of an Order Shortening Notice with Respect to the Motion of Debtors Pursuant To 11 U.S.C. §§ 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet (related document(s)4410) filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF #4411)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet (ECF No. 4410) and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet (ECF No. 4413) (related document(s)4410) filed by Christopher B Spuches on behalf of The Territory of American Samoa. (ECF #4480)

HEARING re Objection to Motion of Debtors Pursuant to 11

U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet (ECF No. 4410) and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet (ECF No. 4413) (related document(s)4410) filed by Christopher B Spuches on behalf of The Commonwealth of Puerto Rico. (ECF #4478)

HEARING re Objection to Motion for Entry of an Order Authorizing and Approving Settlement Term Sheet (related document(s)4410) filed by Peter D'Apice on behalf of Tribal Leadership Committee. (ECF #4474)

HEARING re Objection to Motion to Approve Terms (related document(s)4410) Filed by James Franklin Ozment I on behalf of Creighton Bloyd. (Ozment, James) (ECF #4473)

HEARING re Objection to Motion The State of Alabama's Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(A) and 363(B) For Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Eric J. Snyder on behalf of State of Alabama. (ECF #4472)

HEARING re Objection to Motion / Ad Hoc Committee's Limited Objection to Debtors' Motion to Approve Settlement Term Sheet (related document(s)4410) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF #4471)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet (ECF No. 4410) and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet (ECF No. 4413) (related document(s)4410) filed by Christopher B Spuches on behalf of State of Missouri, by its Attorney General Eric S. Schmitt. (ECF #4470)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet (ECF No. 4410) and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet (ECF No. 4413) (related document(s)4410) filed by Christopher B Spuches on behalf of The State of Mississippi. (ECF #4468)

HEARING re Objection to Motion The State of Texas's Joinder to the State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet (related document(s)4410) filed by Rachel R Obaldo on behalf of The State of Texas, acting by and through the Attorney General of Texas, Ken Paxton. (ECF #4465)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of State of Utah. (ECF #4464)

HEARING re Statement / Joinder of the State of Tennessee to the State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. 105(A) and 363(B) for Entry of an Order Authorizing and Approving Settlement Term Sheet (related document(s)4413) filed by Marvin E. Clements Jr. on behalf of Tennessee Attorney General's Office. (ECF #4462)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of The State of Georgia. (ECF #4461)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of The Commonwealth of Kentucky. (ECF #4458)

HEARING re Objection to Motion /Maria Ecke's Objection to Debtors' Motion to Approve Settlement Term Sheet (related document(s)4410) filed by Maria Ecke. (ECF #4456)

HEARING re Objection to Motion to Approve (related

document(s)4410) filed by Mark Tate on behalf of Westchester Heavy Construction Laborers Local 60 Health & Welfare Fund, et al. (ECF #4455)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Floridas Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of State of Arizona. (ECF #4453)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of The State of Kansas. (ECF #4451)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of The State of South Carolina. (ECF #4449)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of The State of Arkansas. (ECF #4447)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry

of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of The State of North Dakota. (ECF #4445)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of The State of Montana. (ECF #4443)

HEARING re Objection to Motion /Ellen Isaacs' Objection to Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet (related document(s)4410) filed by Ellen Isaacs. (ECF #4441)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry

of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of The State of Alaska. (ECF #4440)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of Ohio Attorney General. (ECF #4437)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of The State of Nebraska. (ECF #4435)

HEARING re Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4410] and Joinder to The State of Florida's Objection to Motion of Debtors Pursuant to 11 U.S.C. § 105(a) and 363(b) for Entry of an Order Authorizing and Approving Settlement Term Sheet [ECF No. 4413] (related document(s)4410) filed by Christopher B Spuches on behalf of The State of Louisiana. (ECF #4433)

HEARING re Objection /State of Indiana's Objection to Debtor's Motion to Approve Settlement Term Sheet and Joinder to the Objection filed by the State of Florida filed by Heather M Crockett on behalf of State of Indiana. (Crockett, Heather). (Related document(s) 4410,4413) (ECF #4418)

HEARING re Objection /State of West Virginia's Objection to Debtors' Motion to Approve Settlement Term Sheet and Joinder to Objection by the State of Florida (related document(s)4410, 4413) filed by Aaron R. Cahn on behalf of State of West Virginia, ex. rel. Patrick Morrisey, Attorney General. (ECF #4417)

HEARING re Objection (related document(s)4410) filed by Christopher B Spuches on behalf of Attorney General, State of Florida. with hearing to be held on 3/4/2022 (check with court for location) (Spuches, Christopher) (ECF #4413)

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P R O C E E D I N G S

THE COURT: Okay, good afternoon. This is Judge Drain, and we're here in In re: Purdue Pharma LP et al. This hearing is being held remotely, primarily by Zoom, unless someone doesn't have access to a screen, in which case they're appearing by telephone.

There are two matters on the calendar today. They're closely related. The first is the Debtor's motion for entry of an order shortening notice with respect to the other motion on the calendar, which is the Debtor's motion for entry of an order authorizing and approving a settlement term sheet under 11 U.S.C. Section 363(b) and 105(a). So, I guess we should address the first motion first.

You're on mute.

MR. HUBENER: Sorry. Many buttons to press on this end, Your Honor.

THE COURT: That's fine.

MR. HUBENER: Can you hear me clearly now?

THE COURT: Yes. Yeah, I can.

MR. HUBENER: Your Honor, for the record, Marshall Huebner, Davis Polk & Wardwell, on behalf of the Debtors. And, Your Honor, no party objected to the motion to shorten time. And I think as the Court knows, objections have actually begun coming in, in fact, within about seven hours of the motion being filed, in part because various parties

who had advance notice, to some extent, to the best of our ability to provide it, given the confidentiality (indiscernible). The fact that there are, I believe, 35 objections (indiscernible) on the docket, I think speaks to the fact that people had an opportunity to craft the objections that they believed appropriate. But most importantly, there are no objections at all to the motion to shorten time, so we would ask as (indiscernible) matter that that be granted.

THE COURT: Okay. Just if you can, Mr. Huebner, you're kind of fading in and out. I'm not sure if you can bring your microphone closer. I did hear you, but I think if you don't do that, there's a risk that going forward, you won't be picked up.

MR. HUBENER: Yep.

THE COURT: So, you're right, there have been no objections to the motion to shorten, and in fact there are 35 filed objections to the underlying motion. And the motion to shorten does state, I believe, cause to shorten the notice period, namely the -- one of the benefits of the settlement term sheet is time sensitive, although frankly, all of them are, given the deadlines that were short but extended four times in the mediation, recognizing the need to conclude the mediation promptly. The benefit, besides doing that, was to -- was the agreement by the settling

states and the District of Columbia to withdraw their appeals, as set forth on the terms of the term sheet, so I will grant the motion to shorten.

MR. HUBENER: Thank you, Your Honor. I am closer to the mic now. Is that better?

THE COURT: Yes.

MR. HUBENER: Okay, terrific. So, Your Honor, one other (indiscernible) matter or program matter before I start. Number one, in connection with the hearing, just so the Court is aware, we established 1,000 phone lines on the (indiscernible) Debtor's side to allow for as much participation as --

THE COURT: You're still fading in and out. I'm sorry.

MR. HUBENER: Hold on, let me -- I have this super-fancy thing, but I guess it's not working very well.

THE COURT: Well, sometimes, fancy things don't.

MR. HUBENER: Yeah, I know. I usually just do it with my headphones on, and I've never had a problem. I now have this Poly speaker basically right next to me. Is this clear?

THE COURT: Yes.

MR. HUBENER: Okay.

THE COURT: Okay.

MR. HUBENER: I'll do my best to sort of keep it

right nearby.

THE COURT: Okay.

MR. HUBENER: So, Your Honor, I was starting to say, and I apologize, we did arrange for 1,000 phone lines to allow for as much participation as possible, especially given, obviously, tomorrow's victim portion of the hearing. We did want to thank various parties who worked with us on that.

In that regard, although I know that your chambers and deputy indicated at the outset, I do want to reiterate, especially in terms of tomorrow, I think that there will likely be some unbelievably searing, difficult, and personal statements that will take an incredible amount of courage for people to give, you know, with hundreds or 1,000 people listening. Obviously, as Your Honor noted last week, it is a court proceeding, and so screenshots and making audio recordings or making video recordings of the screen I think would be, not only I think illegal, but do an unbelievable disservice to the victims, who certainly have a right to expect that their privacy will be respected within the context of a very large and important hearing.

So, whatever the official channels are, I know people are working to broaden those as much as possible, it would be impossible to overstate how much we agree with that. But it is also important that nobody undertake to

violate legal rules and procedures with unofficial channels, you know, and God forbid, capturing and posting on YouTube the victim statements for their own separate purposes. And so, just because that was stated before the Court got on, I thought it was important to quickly mention that and (indiscernible) the record and the transcript.

THE COURT: Okay.

MR. HUBENER: Third, Your Honor, as our motion makes clear, and as I think all parties are aware, the motion, and really the term sheet underlying it, are the result of nine weeks of really literally around the clock, virtually every single day, every Saturday, every Sunday, every week day, very difficult, often hard fought negotiations, primarily among and between the Sacklers and the -- well, we'll call it the nine, just the eight appealing states, all of which were guided by the indefatigable hand of Judge Shelley Chapman and her clerks. And I at least want to stop before we begin to thank Judge Chapman for her just extraordinary, extraordinary, unceasing efforts -- 3:00 in the morning, 2:00 in the morning, until 1:00 in the morning -- and her dedication not only to this mediation, but to its also very important predecessor mediation that resulted in the settlement prior to this one.

THE COURT: Well, I agree with that. Both to Judge Chapman and to her staff, her clerk, I and everyone in

this case really has a real debt of gratitude.

MR. HUBENER: Your Honor, one last thing before I jump into the merits, which really, I guess, arises out of the agenda letter. We are obviously aware that there are 35 objections, and that is unfortunate, and this we'll talk about in a few minutes because, you know, we understand, and we have some sympathy for some of those objections.

It should also be noted, though, that because the reply deadline was very recently, given the extremely short time, there are also some very important supporting statements that were filed on the docket, one by the MSGE, which represents the munis, who are, in fact, very material beneficiaries, I think in their mind, of in fact a majority, the plurality of the consideration being provided under the plan and a very important constituency. The UCC, of course, which is the official DOJ-appointed representative of every unsecured creditor in this case, because we have no secured creditors -- they actually represent the entire creditor body -- and we have the joinders filed by the NAS and the hospitals.

I also think it's important to note, Your Honor, that there are a huge number of parties, both states -- you know, 29 or so of them -- and many other parties who did not object. The fact that a form of joinder that is virtually identical was filed by a single law firm makes it clear that

efforts were clearly undertaken, which we fully respect, to facilitate as many parties objecting as could be, you know, talked to and encouraged to do so. And obviously, there are 618,000 filed claims in this case, and obviously, we've had many hearings with very robust participation. And whether the sort of silent super, super majority who did not appear today did so because they (indiscernible) support the relief or because they've decided not to object to the relief, maybe even reluctantly decided not to object, I don't know, and it's not for me to say. But it should be remembered, when confronted with an agenda letter that -- virtually, a couple of pages listing the objections in a case of this extraordinary size, scope, and complexity, that in no way, shape, or form speaks for the majority of the creditors in this case, not even remotely.

Your Honor, I'd like to spend a few minutes turning to the actual underlying substance. As we noted in our reply brief, what is actually being asked of the Court in terms of the relief granted is, in fact, quite narrow. But what is at issue if the relief is granted is actually quite extraordinary. And I also want to talk about what everyone, including every one of the objectors, stands to lose if the proposed order is not granted.

If the motion is granted and the plan settlement is enhanced by the agreements of the term sheet ultimately

go effective, the estates will receive a guaranteed minimum of $898 million more, up to a total maximum of $1.398 billion in incremental settlement payments by the Sacklers for opioid abatement, all to improve and save lives. If today's relief is denied, the Sacklers will keep every penny of those funds.

If today's relief is granted, every institution and organization in the United States can erase the Sackler name from their buildings, programs, scholarships, endowments. If today's relief is denied, many of those institutions will likely face the legal risks (indiscernible) of donor naming rights policies and possible litigation.

If today's relief is granted, a material and currently unresolved contingency to the effectiveness of the current plan, the need to obtain approvals from multiple governmental entities to change the membership of existing Sackler-established foundations is removed, and the hard-fought and important foundation agreements obtained by the group of 15 in the last round of mediation will be replaced by something yet better: $175 million, in cash, on the effective date. If today's relief is denied, that currently unresolved contingency (indiscernible) remains unresolved.

Your Honor, I am hearing feedback. I'm not sure if other people are unmuted, or maybe even, for some reason,

it's the Court's microphone, which I apologize. I do note that I've never heard that before. It's always been silent, and there is a lot of feedback today.

THE COURT: I'm hearing you fine, and I'm not hearing feedback.

MR. HUBENER: Perfect.

THE COURT: I'm sorry if you're hearing it. If others are --

MR. HUBENER: Well, as long as the Court can hear, it doesn't matter what happens to me.

If today's relief is granted, the nine will consent to the plan releases, forego filing their appeal briefs due this Friday, and otherwise cease participating in the appeals, which also removes multiple issues from the appeals, although the appeals will not be issues before the Second Circuit, but potential issues on further remand after that. Although the appeals will, unless we can convince the other appellants to stand down, still proceed on the schedule set by the Second Circuit, having the nine withdraw from the appeals will hopefully go a long way to facilitating the Debtors' emergence from Chapter 11 and may well accelerate the conclusion of these cases, potentially by several months.

In short, it is undeniable, and in fact it is uncontested that the term sheet will deliver, at basically

zero cost to and zero concession from the Debtors and their estates, multiple, massive, direct and indirect benefits to the estates and all of their creditors, including by lowering the risk of a value-destructive liquidation, in which even the $4.325 billion already committed to the estates under the existing settlement agreement, as well as the Debtors themselves, could likely be lost.

THE COURT: So, can I interrupt you? You phrased this portion of your argument in two ways. One is, if approval of this motion is granted, the following will happen; and then, if it is not, what will happen. But I want to be clear in my understanding. If I grant this motion, those things won't happen; rather, conditions to those things happening will happen, right? The relief, under the term sheet, is conditioned upon an order confirming the plan, or a plan, that is currently on appeal, and that appeal would have to be successful, right, for those benefits of the term sheet to apply, right?

MR. HUBENER: Your Honor, there is a single --

THE COURT: With the exception of the withdrawal of the appeals by the nine.

MR. HUBENER: Yeah, Your Honor, I would say this. I think the order, we hope, was quite carefully drafted to make clear which things are conditional, which is actually most of it, on the appellate process going the right way,

and as it were, clearing the plan for takeoff. The thing that is not conditional is a ruling that is required today -- or tomorrow -- as a predicate to the nine not filing their briefs, that the direct payments contemplated to be made by the nine to the Sacklers don't contravene prior orders of this Court or the Bankruptcy Code.

THE COURT: Well, could I -- I want to ask you about that point as well. The order does say that, the proposed order. The term sheet, as I read its definition of the "approval order," doesn't say that. It does not include in it a requirement that the Court find that "the agreements do not contravene any prior orders of the Court in these cases." It just says that they do not contravene any provision of the Bankruptcy Code.

MR. HUBENER: Yeah, Your Honor, that's true. I think that, you know, as you might imagine, the proposed order was sent around to parties, and someone put that in. Candidly, I can't think of a prior order of this Court that it would contravene, and I can't imagine that Your Honor would allow it, if you thought it violated an order you had entered. And no objector has alleged, out of the 35 objections, that it contravenes any prior order of this Court. They merely believe -- and we'll talk about that at some length in a few minutes -- that it potentially violates various sections of the Bankruptcy Code.

So, you're right; I think in that respect, the form of order has a clause in it that is not in the term sheet. I would imagine that if Your Honor found that to be a problem, we probably aren't getting through today successfully in any event. But if you feel that it's important to strike it because you simply can't or won't review in your mind or otherwise every order you've ever entered for possible conflict, given that it does go beyond what's in the term sheet, I'm just going to take a flier from the podium that people will be content to have the order actually do what the term sheet contemplated that it does.

THE COURT: Okay, well, that was my concern. I've entered a lot of orders in this case. The docket is almost 5,000 entries long. Those aren't all orders, of course. But that is a concern of mine.

And the other language, "any provision of the Bankruptcy Code," I think is what was in the definition of approval order. And, more importantly, since the agreements set forth in the term sheet do contemplate, as far as the release and injunctive provisions, reversal on appeal at the Second Circuit, I can understand the logic of that clause. Because I'm obviously not being asked to overrule Judge McMahon. I couldn't possibly do that, you know, as a matter of jurisdiction. And I couldn't also decide the appeal

before the Second Circuit. That's equally bizarre. But the term sheet doesn't contemplate that in asking for this relief, because it contemplates, as a condition to the effectiveness of the transactions, except for the withdrawal of the appeal and the agreement to pay the professional fees, which would be effective now, that -- the condition subsequent, that there be a ruling by the Second Circuit that would enable the plan to be confirmed.

MR. HUBENER: Yeah, so, Your Honor, just to sort of triple down on that, right, not only is there no whisper of a hint of a peppercorn of a request that you in any way, shape, or form touch the 10.7 releases, Judge McMahon's decision, the issues on appeal, or anything before the Second Circuit, which would of course be unthinkable for reasons anyone who went to law school would understand, the order is quite clear on its face in Paragraph 3, and that was exactly the point, which is that it is effective only upon entry of one or more orders by the Court of Appeals for the Second Circuit or the United States District Court for the Southern District of New York permitting the consummation of the plan, as enhanced by the term sheet.

And so, you're right, I actually -- you elegantly corrected me. There are two things that are relevant now. One is the paragraph that relates to the statement that the direct payments don't contravene the Bankruptcy Code. The

second is the approval, subject to their compliance with all applicable fee reimbursement mechanics and procedures to the payment of the fees and expenses of the nine, which is what we'll talk about in a few minutes, currently standing at $2.5 million, and I think are probably going to end up being a very, very small fraction of similar (indiscernible) paid for other similarly situated groups and parties.

Your Honor, is that helpful?

THE COURT: Yes. Yeah, no, it is.

MR. HUBENER: And again, I will touch some of these things as we go through, because obviously, the objections, I think in many respects, either misunderstand or mischaracterize what we are and are not seeking to do (indiscernible) the appeal.

And so, Your Honor, at the end of the day, no objection actually objects to the overwhelming majority of what is contained in the sort of business deal in the term sheet. Rather, they virtually all focus on one provision, which is the direct agreement by the Sacklers to pay, from their own funds and not in any way, shape, or form under the plan, through the plan, or via the plan, approximately $277 million over 18 years to a supplemental opioid abatement fund, or SOAF, established and administered by the nine for abatement.

Your Honor, the Debtors fully recognize that these

contemplated SOAF payments, by third parties, to third parties, even though they are for abatement and to alleviate harm and misery, are nonetheless offensive to many. So many parties have worked for so long for the common good in these cases, and the objectors are of course completely correct that no party has, to date, requested incremental separate consideration of this type for what they helped achieve.

Let me be both clear and direct, so there is no possibility of confusion or misunderstanding. The Debtors, like many of the objectors, would likewise very strongly have preferred to see 100 percent of the new consideration being paid by the Sacklers under the term sheet given to the estates and distributed in accordance with the plan, which would have likely made today's hearing all but uncontested. But, as set forth in our reply brief, neither the Debtors' nor the objectors' preference, no matter how laudable or understandable, have any bearing on the legality of the SOAF payment under the Bankruptcy Code, the only question actually up for today, or on the far, far larger overwhelming and unquestionably lawful and uncontested benefits to the estates and their creditors contained in all the rest of the provisions of the term sheet.

The nine appealed this Court's order confirming the plan. They were the only states to do so. And to the shock and horror of so many, they temporarily have

prevailed. The term sheet includes, among many other things, payments by the Sacklers from their own funds to the appellants to resolve, among several other things, the appellants' appeals. Every single day, in courthouses all across our great country, appeals are settled by litigants paying other litigants money. This aspect of the term sheet is as quotidian and ubiquitous as it is lawful.

Indeed, as a hopefully helpful thought experiment, imagine the following scenario. There was no court-ordered mediation, and we all woke up two or three weeks ago and read in the newspapers that the Sacklers and the nine had settled their issues for a direct payment of $277 million, and that, having gotten their wire transfer the prior evening, the nine had withdrawn their appeals and no longer contested being bound by the plan (indiscernible). Would any party be able to credibly assert in a signed pleading that that was -- that that direct settlement was an amendment to the plan, or that it was a payment by the Debtors, or that it was a payment by the Debtors that was a distribution under the currently not consummated -- and in fact, locked on appeal -- 12th amended plan? Of course not.

That the nine insisted that, in addition to their direct settlement payment of $277 million, all for abatement, that the Debtors' estates also receive between $898 million and $1.39 billion does not and could never

transmogrify the $277 million direct payment from a workaday and lawful direct settlement payment, entirely and exclusively among third parties, into an unequal plan distribution by Debtors under a plan of reorganization. And that simple fact, ultimately, is fatal to virtually every legal provision and argument cited by the objectors, so I will now walk through them.

One, the SOAF payments are neither funded with estate assets nor being made under the plan. All of the objectors assert, again and again, that the direct payments amend the allocations under the plan or alter the plan's treatment of creditors under Class 4. These statements are untrue and unfounded, and have no possible source in the actual document at issue.

The term sheet could not be more clear. The SOAF payments are not being made by a Debtor or from any Debtor's assets. The SOAF payments are not being made to a Debtor or through a Debtor. The SOAF payments are not being made from or on account of estate property. The SOAF payments are not being made pursuant to or even mechanistically distributed under any plan of reorganization. The SOAF payments require no changes to the existing shareholder settlement agreement, other than with respect to layering them in as a very small -- about 5 percent -- additional secured party, which is never, ever expected to have any relevance to or impact on

any other party, as it only has potential relevance if the Sacklers default. And given the rights and remedies for which we all negotiated, the notion that they would default we believe to be quite unlikely.

Number two, 1123(a)(3) simply has no relevance to the instant motion. Out of the 35 objectors, only West Virginia, and quite briefly at that, alleges that the term sheet is a revised plan that is being proposed in bad faith, in violation of Section 1123(a)(3). Not remotely so. First of all, there is no "revised plan" at all, as our colloquy a few minutes ago makes perfectly clear, and as the papers and the term sheet all make clear.

Second, and more importantly, the notion that a settlement that was fiercely negotiated in a mediation amongst third parties before a sitting federal judge, and that results in massive additional value for the Debtors to distribute under the existing plan allocation, and contains myriad other benefits to the Debtors' estates was proposed either by the Debtors or in bad faith is implausible.

As I said earlier, the Debtors understand and empathize with the objectors' frustrations about there being SOAF payments. But the SOAF payments just don't involve estate assets and are not being made under the plan or any plan, and the term sheet is massively beneficial to the estate. West Virginia's accusation that the Debtors have

proposed a new plan in bad faith has no merit and should be rejected.

Three, there is no unequal plan treatment under 1123(a)(4). Your Honor, I can't say it more plainly than this. Nothing in the term sheet changes the relative allocation or treatment of any creditor in any class, including Classes 4 and 5, as to which it does one thing. It increases materially the funds being distributed to them under the otherwise unaltered plan and distributional mechanics.

Your Honor, they wish they were getting yet more new money, $1.175 instead of $898 and $1.675 billion instead of $1.398 billion. I understand. But that does not a cognizable 1123(a)(4) objection make. All Class 4 creditors are getting their distributions from NOAT in exchange for the plan's discharge of the Debtors and the third-party releases under Plan Section 10.7. Nothing in the term sheet gives the nine or New Hampshire one penny more than any other class creditor under the plan or otherwise from the Debtors or their estates, other than their share of the increased money coming into the MDT.

And of course, the nine and New Hampshire are now, at long last, agreeing to consent and be bound to the exact same releases that bind every other creditor, and that no other Class 4 creditor appealed. The various allocation

formulae and trust distribution procedures remain entirely unchanged by the term sheet. It does only one thing with respect to the plan's treatment of creditors in Class 4 and Class 5. It increases the amount they will get to share under the plan's mechanics by $898 million to $1.398 billion.

Your Honor, those are the actual facts, which ends the inquiry. But the law is no less clear and no less helpful. As we lay out in our brief, courts have repeatedly and uniformly held that payments to select creditors from and by third parties do not constitute "treatment" under 1123(a)(4). You have ICL from the Third Circuit in 2015. You have TSIC from Delaware in 2008. And you have DBSD from the Second Circuit, which is highly instructive on this point. The Second Circuit drew the line between what is and is not an actual payment by a third party, but left no mistake of any kind that if it's an actual payment by a third party, 1123(a)(4) has no relevance.

Indeed, quite and in fact emphatically, unlike here, in many of those cases, the challenged payments were actually being made under the plan, and they were being made from assets that were actually the Debtors' assets but were sort of deemed not the Debtors' assets because they were also the collateral of a secured creditor. Here, we have neither of those two wavy attributes that many courts

nevertheless permit. Third parties settling with and paying third parties directly from their own money is leagues and leagues away from the boundaries of what is permissible under 1123(a)(4).

Four, the term sheet is not a sub rosa plan. A few of the objectors contend that the SOAF payments somehow constitute a sub rosa plan, relying again on the false claim that the SOAF payments "modify the distribution and allocation model of the plan," and those are the critical words. I've already covered this, and the documents are clear. The SOAF payments do no such thing. They are payments by third parties to third parties from their own assets, and do nothing to change the distribution and allocation model of the plan.

I otherwise rest on our papers on the sub rosa issue, except to note one point. In every single case cited by the objectors except for one, the sub rosa objector lost. I think that's pretty telling. And the only case that, seemingly, any objector found where a sub rosa objection ever succeeded happened 39 years ago in the Fifth Circuit in Braniff, which is so different I'm not going to actually take time to distinguish it. I think our papers make the point sufficiently.

Number five, jurisdiction. Your Honor, we believe that this argument, yet again, rests on the same fundamental

misunderstanding or mischaracterization of the limited relief requested today. It is thoroughly addressed in our papers, including a detailed discussion of the case law, including, once again, their case law, which, once again, virtually all found jurisdiction proper in circumstances relatively analogous to the ones (indiscernible).

Simply stated, and as we discussed at the outset, under the term sheet, there are de minimis changes to discrete sections of the settlement agreement attached to the plan, if and when we are cleared for takeoff by the Second Circuit. The order is clear on its face, which is why what we seek today does not remotely implicate any of the cases cited by the objectors.

Your Honor, as we said in our brief, not a sentence, not a word, not a letter, not a comma of the plan releases currently on appeal is being changed, touched, amended, revised, broadened, narrowed; absolutely nothing. Nor does anything in the term sheet revise the plan's distributional scheme or any party's distributional rights under the plan. Unless the Court has questions, I will rest on our papers for the rest of jurisdiction, as we think the answer is quite clear.

Number six, Your Honor, and there's only seven, which came from only a couple of the objectors, I believe -- although maybe I have that wrong -- is that this is an

advisory opinion and that today's hearing isn't ripe and could be heard at some time in the future. I think we've, in fact, already discussed this, based on Your Honor's questions. But for the avoidance of doubt, the requested order is in no way advisory. Its entry will result in multiple parties taking immediate action highly beneficial to the Debtors' estates, including notifying the Second Circuit of the settlement and the case of nine refraining from filing their appellate briefs that are due this Friday and withdrawing from the appeal.

In attempting to argue otherwise, the objectors strangely assert that the fact that there are conditions precedent to the effectiveness of some -- but notably, Your Honor, by no means all -- of the agreements in the term sheet somehow renders it constitutionally unready for adjudication. That is, of course, wrong.

Indeed, just about every plan of reorganization ever confirmed in U.S. bankruptcy history, including ours, contains various conditions precedent. It would be quite the revelation to the U.S. legal system if every plan ever confirmed that had a condition precedent or confirmation order violated the Constitution, and of course, that's not the case. And for that reason, it's not a surprise the objectors have no support whatsoever for this contention.

Number seven, payment of the nine's professional

fees. Your Honor, I will rest exclusively on our papers for this point, except to note one thing. It is the law of this case three times over that Section 363 is entirely appropriate as the basis for these Debtors to pay certain fees for select groups and committees. I cannot imagine that the state objectors, many of whom have been the primary beneficiary of these orders and payments made in material sums over the last two and a half years on a monthly basis, in fact remotely want this Court to revisit this issue. We request the approval to pay these relatively modest sums that, as I said before, currently total $2.5 million, pursuant to appropriate procedures, be approved.

Your Honor, if it pleases the Court, that completes my opening argument, other than to note one final thing. It would be unthinkable and crushing to so many, for so many reasons, if today's relief were denied and the Sackler family kept $1.175 to $1.675 billion, instead of those sums going to abatement, and if the probability of success of these cases that so many parties, including so many of the objectors, have worked so hard for so long to bring to fruition became materially less likely to come to fruition. And so, other than reserving time to address anything from the objectors' oral presentations, Your Honor, I would propose to stop it.

THE COURT: Okay. Thank you. I've read all of

the pleadings, I believe, that have been filed on this motion, including those in support of the motion that were filed by the official creditors' committee, joined in by the ad hoc committee of NAS children's -- of NAS children and the ad hoc group of hospitals, which also joined in it. And I've also read the response of the multi-state governmental entities group, or the MSGE, in support of the motion. They may want to speak in support of the motion, or they can rest on their papers and just reserve time if they want to respond to something someone else said.

I lost the picture. I don't know.

CLERK: You're still on.

THE COURT: Okay. But I'm happy to hear from them, too, if they want to. Or, again, they can just wait to speak, if some objector says something that they want to respond to.

MR. PREIS: Good afternoon, Your Honor. This is Arik Preis --

THE COURT: You're coming in faintly, too, Mr. Preis. I'm not quite sure why, but --

MR. PREIS: Is this any better?

THE COURT: Yes, much better.

MR. PREIS: I'm sorry about that. So, can you hear me now?

THE COURT: Yes.

MR. PREIS: Your Honor, I think -- for right now, I think the UCC would like to make just a few comments in support of the Debtors, and then we'll reserve time for our reply at the end.

THE COURT: Okay.

MR. PREIS: Okay. Good afternoon, Your Honor, Arik Preis from Akin Gump for the record, on behalf of the Official Committee of Unsecured Creditors.

At the outset, we'd like to make something clear. We appreciate all the hard work that the various AGs, including the state of Florida, engaged in to build consensus and to create the so-called intensity fund, the small states fund, and the state political subdivision arrangement in this case. Nothing that we've said in our papers or that we're going to say today could in any way be viewed as a criticism, belittling, or denigration of those efforts. And, although we've had our differences with the AGs in these cases, and continue to do so, we can also appreciate when they are constructive, they work together, and they reach positive (indiscernible).

We also want to be clear about something else. Like the Debtors, we would of course have preferred that the nine had not settled for SOAF, but rather, followed the pre-agreed NOAT allocation for the $277. And we say this, obviously, like Mr. Huebner said, because it would have

obviated the need for the hearing today and allowed for a settlement that is unquestionably in the best interests of the estate to be approved on an almost uncontested basis.

That being said, we support the entry of the settlement motion. In that regard, the only questions in front of the Court are the following: one, whether the settlement motion presents a settlement that violates the Bankruptcy Code; two, whether the Court has the ability to enter the order; and three, whether the settlement is in the best interests of the estate. I suppose, potentially, there's a question of whether the AHC's threat not to consent to any modifications to the shareholder settlement agreement is made in good faith, but I'll get to that later.

With regard to the first and second questions, I'm not going to repeat the arguments that Mr. Huebner went through. With regard to the third question, there is no question the answer is yes. The settlement is a landmark accomplishment in a case that has now dragged on for more than 800 days. And as we pointed out in our papers, this historic event is remarkably accomplished without the estate giving up anything, indeed, without the creditors in this case having to do anything other than support the same plan they supported six months ago.

They get the following if the Second Circuit reverses the District Court: one, $1 billion in new money

from the Sacklers, to be used for abatement.

Two -- and I want to be specific about this -- the Sacklers' agreement to convert $175 million of the charitable contribution (indiscernible) to an actual cash payment on the effective date, again, to be used for abatement. I point out that this is a huge concession and has a huge impact for the public side, given the way that the distribution of funds is set forth in the plan. It also buttons up a potential issue that could have arisen under the 12th amended plan.

Third, the Sacklers' agreement with regard to the ability of institutions, museums, and other entities to take down the Sackler name, a concession that has been sought for years, and that has a very, very meaningful impact on personal injury claimants, as you'll hear tomorrow.

Fourth, the Debtors agree to populate the document repository with certain additional categories of documents, furthering the goal we've had since day one.

And fifth, the Sacklers agree that, during the course of the hearing, to allow victims a period of hours to address them publicly, openly, and honestly about how Oxycontin has affected their lives and the lives of their loved ones, as well as to speak directly to the Sacklers about their feelings and emotions. No one can possibly underestimate just how historic tomorrow's session and

important it will be.

And all creditors, other than the nine, are getting a sixth very important, immediate thing. The nine are agreeing not to pursue their appeal to the Second Circuit, which removes many, but not all, of the appellees, leaving only a non-creditor, along with three pro se victims. Again, no one is being asked to give up anything meaningful in return for these gets.

And so, now we come to the objections by the AHC and the states. With regard to the states, as I mentioned earlier, we fully appreciate the work that went into the intensity fund and their view that that is a fair and appropriate way to distribute funds.

That being said, and putting aside the fact that the Sackler payments to the SOAF are being done outside of the plan, the bottom line is that the approximately $220 million of SOAF money that would not have gone to the nine anyway is being used for abatement. And while the money may not be going to the states based on the intensity fund, from the UCC's perspective, it is money that is going to fight the opioid epidemic, and therefore is tremendously beneficial for the American public, which is really the creditor body in the case.

I want to make four points about this. First, the U.S. is a transient society. We have artificial sate lines

that divide us, but people cross from state to state all the time. Looked at in this way, we should all be pleased that money is coming in from the Sacklers to fight the opioid epidemic.

For instance, let's take the following example, which is a actual example from a PI case. A family that lives in California sends their child to school in Nebraska. While in Nebraska, the child takes Oxycontin and, tragically, dies. Which state gets credit for purposes of the intensity fund for that?

Another example: a person lived in Maryland, one of the nine, goes to Florida for a rehab program, and, again, tragically dies of an overdose. Who gets the credit for that? There's no right answer for that. The point is that, from the point of view of the estate, any money coming in for opioid abatement is good.

Second, and while we don't denigrate the seriousness with which the objections are pursued, it's just not that believable that any objecting state will seriously oppose a result that nets them significantly more money and provides all the other benefits I listed previously because they don't like that other states are getting too much.

Third, something that may be overlooked: while the nine are benefitting from the SOAF and 20 states are objecting, all the others have stayed silent, as Mr. Huebner

pointed out. This includes Massachusetts, New York, Colorado, Pennsylvania, North Carolina, and others, who have been among the most vocal in these cases for the last two-plus years, opposing a lot of things early on, until they reached a settlement. And yet, now they are silent. Does this mean that they agree or like the SOAF? No, not at all. But it does mean that they looked at the situation, balanced the various factors, and determined that for the good of the American public, they will hold their noses and not object.

Perhaps this is because they're looking at the situation from the point of view of all of us against the Sacklers, and have realized that if the settlement is not approved, we're in a worse position than we are without the extra concessions. And as an estate fiduciary, we appreciate their position.

Similarly, we would note that not one, not one private-side claimant, including the PIs, has objected to the settlement, and some are going to speak out or have filed statements in support. This is because they, too, understand that this settlement is unquestionably better for the estate and brings us all one step closer to our goal of victim compensation and opioid abatement.

Four, we understand the issue raised by Florida that introducing a SOAF into this settlement could have a detrimental effect in the other intra-AG negotiations in

other opioid cases and other non-opioid cases. And we know that if the nine were the 20 and the 20 were the nine, then the nine would likely be objecting to the SOAF for the 20. But we are estate fiduciaries in only these cases, and while we're sympathetic to that issue, it's not an issue that goes into the calculus of what is in the best interests of the estate (indiscernible).

With regard to the AHC, they made two objections. First, they would like the nine to use the money in connection with the pre-agreed TDP and the MBT. In a sense, it's the same quasi-objection that (indiscernible). If this were purely an issue of what an individual creditor believes is preferable for itself, we understand. But that's not a legal objection; it's a want-to-have. And from our perspective, as I said, as long as the money is being used for the opioid epidemic in a manner consistent with applicable law, I see no reason why any of the nine needs to follow the pre-agreed TDP.

Indeed, I would note that Attorney General Tong with Connecticut has gone on record a few times saying he is looking to use Connecticut's money to set up a victims' fund or a victims' trust. If his goal is to use the money going to Connecticut from the SOAF to provide additional compensation to victims in Connecticut, I can assure you that the PI victims across the country would applaud those

efforts, even if, as it turns out, the AHC would not.

The second objection that the AHC raises is that it wants to ensure the SOAF money doesn't jump the line to be pari passu with earlier money due in the event of a default. On this, we agree, and we've told the Debtors, and through them, the nine. Indeed, it would be contrary to everything that was previously agreed among the privates and the publics, in the event that one of the Sackler (indiscernible) defaults and that we need to collect from them, and as we go about collecting, we rejigger the payment (indiscernible) between publics and privates. I don't think that's what the (indiscernible), and I can't imagine that that is at all what's part of the settlement. The AHC --

THE COURT: Well, could we stop on that point?

MR. PREIS: Sure.

THE COURT: I don't see any jumping -- I don't see this settlement changing, at all, the terms of the PI treatment under the plan.

MR. PREIS: Well, the -- that's what I believed, and I've heard nothing else. The only question is whether the nine believes that, by virtue of their payments being pari passu in the event of an acceleration, that they would, in some way, jump the line and undo the public/private allocation. Again, I don't believe there's anything in the term sheet that says that, and we -- that's exactly what the

deal is now and it should be going forward.

THE COURT: Okay. And I recognize that the term sheet does contemplate the drafting of an inter-creditor agreement in good faith, in which the Debtor will participate. But I would think that that really would deal with simply the rights of the NOAT and the S-O-A-F, or SOAF, in the event of a default, as opposed to the separate provisions of the plan that deal with the upfront payments. And I'll note that the timing on the payments is consistent with that, as laid out in the -- with that inference, as laid out in Attachment A.

MR. PREIS: Thank you, Your Honor. (indiscernible). I'm not done yet, but I didn't know if he wanted to say something.

MR. VONNEGUT: Your Honor, this is Eli Vonnegut of Davis Polk. I just wanted to confirm that's correct. The inter-creditor agreement will govern those issues.

THE COURT: Well, issues as between the enforcement rights of the NOAT and the -- and the SOAF. But it would be a very different settlement if the proposal would be to change the timing of the payment of the $700 million to the personal injury trust.

MR. VONNEGUT: Understood, Your Honor. That timing will not be changed.

THE COURT: Okay. All right, thanks.

MR. PREIS: Okay, with that, Your Honor, I (indiscernible). But first, their legal arguments are unavailing. Mr. Huebner went through them; I'm not going to repeat them.

Second, it's no surprise, however, that the U.S. Trustee is objecting. They undoubtedly do not want to be the only party, other than three pro ses, left appealing confirmation of a plan that would now be supported by every state in the union, as well as every non-governmental group in the case. It would be unfathomable for the U.S. Government to stand in the way of a plan that is devoted to fighting the opioid epidemic and is supported by every economic creditor in the case because the U.S. Trustee's office is using this case to fight nonconsensual third-party releases.

In sum, Your Honor, there's simply no legal reason not to approve a settlement that is in the best interests of the estate. And while we completely understand and are sympathetic to many of the nonlegal arguments being made, we are only fiduciaries for this case, this settlement, and this agreed-upon allocation. In that capacity, no one would argue that this settlement is an unbelievable improvement for the American public.

The last thing I want to say, Your Honor, is like Mr. Huebner said, we very much appreciate Judge Chapman's

time, her dedication to this mediation, her spirit, her hard work, and the way that she invested herself personally over the last two months. Thank you, Your Honor.

THE COURT: Okay. Thank you. Again, I'm happy to hear from the other supporters of this, but you shouldn't feel that you have to say anything. But if you want to, you can go ahead.

MR. ISRAEL: Good afternoon, Your Honor, Harold Israel on behalf of the ad hoc committee of NAS children. We rest on our papers.

THE COURT: Okay. Thank you.

MR. MACLAY: And, Your Honor, this is Kevin Maclay for the MSGE group, and I would just like to make a couple of very high-level comments, and then reserve until rebuttal.

THE COURT: Okay. Go ahead.

MR. MACLAY: Okay. Your Honor, I think our paper makes very clear our concern that, as parties' positions rapidly become entrenched and as people sort of disagree about some of the details of the deal, what could be lost is the enormous benefit that the deal provides to every relevant party, as well as to the country as a whole. I think that probably shines through pretty clearly from our papers.

We agree with both the Debtors and the UCC that it

would have been better if there hadn't been a separate SOAF, but all of the additional funds had been sent to the NOAT. It would have seemed more consistent with the sort of unity of purpose and public mindedness that have really motivated almost all of the actors in this case since the onset. But it's not something that should dynamite the substantial progress that Judge Chapman oversaw, and it shouldn't detract from the fact that what the nine have helped accomplish here is extremely laudable, and we applaud them for their efforts and what has resulted from those efforts. And so, I think that's big picture number one.

Big picture number two, Your Honor, is the term sheet is very clear about one thing. It says in its very first numbered paragraph under the increased economic consideration and accommodations -- incremental economic consideration and accommodations, "Funds in the SOAF shall be devoted exclusively to opioid-related abatement." That, obviously, is a very important term. I think, again, all of the parties in this case, it's very consistent with your observations very early on in this matter that we didn't want to have a re-do of the tobacco settlement situation, where funds that were supposed to be used to help those harmed instead were used for political vanity projects, et cetera. And we have here this statement, and we would assume and hope and for people to correct us if we're wrong,

that that statement means that the multiyear process of negotiating and fine tuning, crafting the NOAT, which is designed to provide abatement to the various jurisdictions within it, which is all of them, would also be reflected in the SOAF. Or, to put it another way, Your Honor, we (indiscernible) the term sheet to suggest that the SOAF is some kind of a political slush fund that would really be used for abatement. We believe it's going to be used essentially as a mirror of the NOAT, and if that isn't true, I would hope we would hear from (indiscernible) that it isn't true, that they're going to use the SOAF in some other way.

But assuming that it's going to be used for (indiscernible) which should be the abatement structure agreed to and fine-tuned over years and many negotiations and from some very fine mediators, you know, obviously, this is just a (indiscernible) for everyone and there will be some details that remain to be ironed out because this just a term sheet -- Obviously, the SOAF doesn't yet exist and so no doubt there will be (indiscernible) further down the pike that I hope (indiscernible) together with a unity of purpose (indiscernible). But in terms of what Your Honor is facing here today and the approval of the term sheet, we believe it represents a dramatic and positive step forward, and, obviously, you know, the funds should be used for abatement

and we're confident that with the Court's assistance and further negotiations, you know, we can ensure that they are used in a way that they're used consistently with a NOAT structure that was agreed to by all parties over the course of many months.

Thank you, Your Honor. I reserve the rest of my time for rebuttal.

THE COURT: Okay. I would just note that the settlement term sheet states that funds in the SOAF shall be "devoted exclusively to opioid related abatement including support and services for survivors, victims, and their families, and each member of the nine shall have the right to direct allocation of the SOAF funds for such purposes."

So the overall use of the funds, I think, is clear and, frankly, I think that is one aspect of the settlement that I'm being asked to approve today in a way that is a building block for a plan if a plan is found to be confirmable here on appeal. And, obviously it reflects, I think, the view of the settling states and the District of Columbia that the funds should be and must be used in that way under this agreement. I'm assuming that though the details will be clarified that overall purpose is clear and I think there would be, as always has been discussed in this case to distinguish it from, for example, the tobacco settlements, a provision in the confirmation order that

would, in essence, make that a binding aspect of the plan, if again the plan were to be found to be confirmable by the Circuit.

Okay. I think I've heard then from those who have filed statements in support of the motion. I'm happy to hear from the objectors. I would like to take just a very short break, literally 30 seconds. I just left something in the office that I want to have in front of me, so if you could bear with me, Mr. Guard, I'll be back in under a minute.

(Off the record)

Okay. This is Judge Drain. We're back on the record. I think that was less than 30 seconds. So, again, I'm happy to hear the objectors at this point, although I will reiterate that I've read each of the objections, as well. I know a number of them simply adopt one or the other of the objections, in most cases the state of Florida's, and I don't think every objector should feel the need to speak, especially those that have adopted someone else's objection here on record as having done so and I've read their pleading.

So I think it makes sense for the state of Florida to go first. It filed a substantive objection that has been adopted by a number of other objectors, so you can go ahead, sir.

MR. GUARD: May it please, Your Honor, John Guard, Chief Deputy Attorney General, State of Florida.

Your Honor, I would start by first noting that Mr. Huebner made a point of how the objections among this case largely copied it and adopted a joinder that was filed by Florida's counsel. I would note for the last two and a half years, Mr. Huebner has not objected to Florida, Tennessee, or Texas gathering the supporting states and getting them to file things when they support the Debtor. Just now, it's only that we object to something the Debtor's proposed that he has a problem with that.

But moving on to the actual substantive arguments, I think Mr. Huebner overblows the relief that this motion gives. The appeal continues. The Court's confirmation order is still vacated and there is a substantial risk if -- even this Court grants this motion that this Court's -- that the district court's decision will be affirmed and this Court's decision will remain vacated. This motion does little to mitigate that risk. There's still a substantial probability that the $4 billion-plus that the plan provided to Americans for abatement won't occur.

It is possible -- he also overblows the result of you not granting this motion today. The reality is even if the nine file their briefs, negotiation could continue. This time instead of just being the Sacklers and the nine,

it could include the other states and the discussions and negotiations include all, and maybe we could avoid having almost half of America -- or half of the states -- objecting to the result.

The same or similar relief could be obtained against the Sacklers and the reality is until the Second Circuit rules, there is still time -- and in fact, I believe the Second Circuit is going to likely grant mediation. I apologize, Your Honor. I'm --

THE COURT: Well, the Second Circuit grants mediation on every appeal, but it's quite different than the mediation that the parties in this case have gone through in four different tranches. But, Mr. Guard, can I just -- it seems to me that because so much of this settlement in terms of the actual payments out is conditioned upon confirmation of a plan that the issue raised -- the primary issue -- raised by the state of Florida and those joining in the objection, which I have no problem with and I don't think the Debtor did either -- the format that that was done in -- could go forward too by its own terms.

1123(a)(4) says that as a caveat to the requirement that plan provide that same treatment for each claim or interest of a particular class, "unless the holder of a particular claim or interest agrees to less favorable treatment of such particular claim or interest." So it

seems to me that the negotiations, if there is a prospect of them, could continue because that objection still exists. There wouldn't be a ruling on that objection before a plan was before the Court -- that 1123(a)(4) objection -- and the only consequence is that the parties would be negotiating knowing that there is a sum that is anywhere from a billion to a billion and a half greater than the sum that's in the plan that's on appeal.

MR. GUARD: I think the problem with that, Your Honor, is they're kind of asking you to prejudge that objection and in the term sheet, I believe there is a statement is (indiscernible) the side payment is reversed or overruled in a court of competent jurisdiction, the payment still gets made, and so I think there are consequences to approval.

If the Court is going to withhold on that issue, then --

THE COURT: Well, let's look at the settlement agreement because I think this is -- or the term sheet. This is an important point. So I think you're referring to paragraph 11, right, on the -- in the term sheet on -- well, the pages aren't numbered. I have a fax page so it's -- at the top -- 32 of 38.

MR. GUARD: I believe so, Your Honor. I'm trying to get to it.

THE COURT: All right. So it says, "If any payments or consideration or amounts allocated to any of the nine under the settlement proposal cannot be effectuated because the approval order is reversed by a final order of a court of competent jurisdiction, the Sackler family member or trust shall pay such consideration" -- which is the SOAF consideration, I believe -- "pursuant to one or more alternative mechanisms."

Although later in the section it refers to mechanisms which would be attached to the definitive documents on or before the effective date of the plan. So I think that could be read two ways, although, one could read it to say that even if the approval order is reversed, this payment is made, but again, it's a payment that's being made by the Sackler family members and I just -- to me, that's -- frankly, if the Circuit did not reverse the district court's confirmation order, I think everyone else would be free to negotiate with the Sackler family members individually in the chaos theory because at that point, I find it hard to believe that I would continue the preliminary injunction.

So to me, it's -- I think what it's meant to do is highlight that this is a payment by the Sackler members and not the estate, but I don't see why, in all the most likely scenarios, it would preclude negotiations.

MR. GUARD: Well, I think negotiations --

THE COURT: -- of a plan because I don't think -- because again, I think if the Circuit doesn't find a pathway to confirm a plan with the release of third-party claims, there won't be any negotiations except on a sort of dog-eat-dog basis. The only plan negotiations would be where the Circuit says, "yes, we agree that in Metromedia and Manville and in the church cases and the partnership cases and about ten other cases, we and the lower courts following us have authorized third-party releases under appropriate scenarios. This is one of them."

Then the plan goes back to me and you have your confirmation argument, and you can negotiate. And maybe I'll grant your objection and maybe I won't if you're not able to meet your (indiscernible).

MR. GUARD: Well, Your Honor, likely, may be retired by then. I don't --

THE COURT: Well, someone will. I'm sure there's someone who could just as easily interpret the case law and deal with the issue.

MR. GUARD: I think that -- our concern is that the nine and the Debtors and everyone else is going to indicate that by approving this today if that objection is, you know, either been already decided and determined in a way and therefore, you know, we're not going to be able to make it or the negotiation as you've just referred to it is

going to be very different than a negotiation that could occur now where you have not decided.

THE COURT: Well, I think the negotiation would be different. There's no doubt about that, but that's a consequence of life. I mean, I don't think that's an issue. But I don't see how I could definitively rule on the 1123(a)(4) issue today in that I don't have a plan before me. What I have before me is a term sheet that I need to evaluate the reasonableness of, and if I felt that the 1123(a)(4) argument that you're making is, you know, likely to prevail or strongly likely to prevail, I probably wouldn't approve it, but that doesn't mean that I've decided the issue. It's not a matter of collateral estoppel. It's in the context of approving a settlement.

MR. GUARD: And to kind of go on, you mentioned -- I'll move on from it -- this argument, Your Honor. We just have deep concerns about how this is going to, in the end, play out and we think that they're asking kind of on the front end for something that they can then later use on the back end.

But we were talking about a minute ago or you mentioned a minute ago that the money is not coming from the estate and is the Sackler money. I would kind of point out as I know Your Honor is well aware, more than -- I think it's more than 80 percent of the money that is funding this

plan is Sackler money, and -- so there is no difference between this $277 million that is being paid on the side to the nine versus the other $4 billion-plus that is being paid to all the states. It is all coming from the same sources, and so while I appreciate the argument and the effort to try to subvert and get around the prohibition and pay a premium to these states, we have grave concerns that not only is this going to make future deals in -- outside of this bankruptcy -- more difficult, but it invites a certain level of abuse inside the bankruptcy process where affiliates or others associated with debtors could strike side deals to either discourage appeals or to obtain confirmation, and, obviously, that's not what the Bankruptcy Code is meant to do.

It's not what 1123(a)(4) was meant to stop, and so that -- we would ask for that reason to reject the Debtor's argument about the money is not coming from the estate, it's coming from the Sacklers. We think that distinction is unavailing given the fact since day one this bankruptcy is going to have been funded by the Sacklers or largely by the Sacklers.

THE COURT: Well, but the Sacklers' assets aren't the estate assets. They're the Sacklers' assets.

MR. GUARD: I get that, Your Honor. But in order to get these releases, they pledged their assets and, you

know, on multiple occasions indicated that they had -- that they were not going to pay more and so -- and on multiple occasion we stopped. On multiple occasions they increased it trying to get more states on board, and now they're paying a side deal to the last nine.

THE COURT: Well, except -- look. There are two sets of claims against the "Sacklers." I'm using the term broadly. It includes the trusts and the other companies that the Sacklers have covered in the -- as released parties. The first, as we all know, are the estate's claims, which are essentially fraudulent transfer claims although there are also veil piercing and the like estate claims. And then the second, very importantly, are third party claims which are being settled in the plan as well.

And I think the response to your point is particularly two-fold. The first is, like the Debtors, like the creditors committee, I fully understand why your state and the other objecting states are angry that the allocation formula so carefully negotiated in this case, essentially in the mediation or finished in the mediation with Mr. Feinberg and Judge Layn -- Layn Phillips, excuse me -- isn't being followed here in this settlement, but I think that is just an expression of frustration. I don't think that's a legal principle, and certainly in the subsequent negotiation that you have over an allocation anything when there's a national

issue, I don't see any reason why you can't take it out on these nine states. You know, that's a separate deal, that's a separate issue in the future.

So I'm really just focusing on this case, and as far as this case is concerned, except for these nine states and the District of Columbia, I don't have objections to the release of the third-party claims; and the settlement of the estate's claims is done. There was no objection to that, and, in fact, one could argue that some recent case law highlights that there really wouldn't be more money put on the table for that settlement, arguably, which deals specifically with -- and denies -- an argument that tax payments in a pass-through entity could be fraudulent transfers. That's In re F-Squared Investment Management, 633 B.R.663 (Bankr. D Del. 2022).

So I think what we're talking about here is pretty close if not the same as the hypothetical that Mr. Huebner spun out, which is that to get a consensual release, just like there've been no objections by the other states to the release as per the $4.5 billion deal, the Sacklers could have gone out and gotten that consensual release separately and they're not doing it through the plan. They are amending the settlement agreement. I understand that issue. But to me, that goes to 1123(a)(4) and the dynamics there, and it's hard for me to believe that that issue, as far as

the intercreditor enforcement rights are concerned, won't get resolved in the drafting.

I'm having a hard time seeing how, as disagreeable as it is in terms of allocation, it's improper, because I think it is not estate property. It's not hidden estate property. It's not an opportunity that the estate had that is being settled, you know, under the table. It's different than Jevic. It's different than DBSD. You know, it -- each of those cases involved property of the estate. Jevic involved a settlement of a fraudulent transfer lawsuit. That's been settled here. That money was already paid under the old plan. So I think, while I told you that I would have and that my successor would have an open mind when the confirmation hearing came up under 1123(a)(4), as a settlement -- and the courts have said even with settlements -- even though 1123(a)(4) and confirmation provisions don't apply when you're considering a settlement -- I certainly do want to consider fundamental premises of the Bankruptcy Code which include the general proposition of equality of treatment -- the money's not coming from the estate.

MR. GUARD: Your Honor, first, we're not mad. I want to be clear about that. We are disappointed.

THE COURT: Well, I would be mad. I mean, you can say disappointed. I don't -- I would be mad if I spent months negotiating something and then it's different, but

you're more diplomatic than I am or maybe less volatile. So "disappointed" is fine.

MR. GUARD: Well, I mean, Your Honor, the reason why -- or part of the reason why we're objecting, other than the bankruptcy grounds is, the states collectively and collaboratively have now settled opioid actions for over $27 billion and this settlement -- this -- $1 billion most of which is paid between years 10 through 18 imperils and impairs the ability of any future settlement which they're -- I mean, Purdue is just one of many.

I know that is not a bankruptcy consideration, but it is a very much a consideration, and you know, this is money that is much needed. It is money that is going to save lives and if these other settlements are delayed or not happen, you know, that is a concern. That is a policy concern. Again, I know it's not a bankruptcy concern. And so that is part of the reason why you've gotten the level of objection that you've gotten here.

I mean, again -- I guess if what Your Honor is saying is that there's going to have to be another plan and there's going to be a resolicitation and there's going to the --

THE COURT: I'm not sure there would be a resolicitation, and I haven't said that. But there does have to be, I think, at least an amendment to the plan to

reflect the increased payment to the NOAT. So there will be another plan, but the case law is, I think, quite clear that you don't need to resolicit where there are improvements.

MR. GUARD: But if they're -- well, depending, I guess, on how -- because we do not know how -- we have a term sheet here and I know you've talked about the intercreditor agreements, and there's basically a security issue with the pari-passu. I mean, there -- well, I guess what I would say -- (indiscernible) what I would say is, right now, the nine are in the exact same situation as the other 41. The plan has been vacated so we still have -- unless there is a reversal -- our individual claim and, you know, I guess it is possible or conceivable that the 20 states that are objecting could, you know, decide to file amicus briefs in the Second Circuit advocating for the opposite position. I guess that is possible. I don't think it's likely.

THE COURT: I don't think that's likely either. I mean, honestly, if the Second Circuit reverses, what would you rather have, a plan that has a maximum of 4.5 billion or a plan that adds another 898 million to 1.398 billion to it?

MR. GUARD: Well, I guess --

THE COURT: It doesn't matter, right, so you wouldn't want to argue against the appeal.

MR. GUARD: Well, Your Honor, I guess my point is

that we're -- I guess part of the Debtor's argument is that we are somehow differently situated than the nine and Your Honor kind of made that point too, and the reality is right now, sitting here, we are not because the plan has been vacated, and you know, barring certain things happening, we are -- you know, very well could end up in -- having to propose a completely different plan and -- with a different kind of release in a different situation. And, obviously, I'm not asking you to rule in advance on whether the modification requires (indiscernible) or resoliciting but, you know, I'll hold those argument until we see how things shake out.

But I think that from our point of view and the Debtor's conceded this, he is actually seeking some modifications here and this Court does not have jurisdiction because that order is under appeal. And I don't think you can parse that issue and say, well, it's not the particular provision in that order that is actually up on appeal. The whole order has at this point in time been vacated --

THE COURT: No, but I don't --

MR. GUARD: -- not just one --

THE COURT: I don't think the Debtor has stated what you've said and I don't think the motion seeks any change to a plan. There's no plan before me. What the motion seeks to approve is the settlement term sheet which

has, I think, four items in it that are to go into effect upon such approval, and the rest of it is conditioned upon, first, the grant of the appeals that are before the Court -- of the appeal before the Court -- and then the confirmation of a plan that includes the additional funding for the NOAT. There's no amendment to the plan that's before me today.

MR. GUARD: But the term sheet implies that -- well, I understand it may be conditional, but it is -- I mean, on proposed order of paragraph 3, authorized the Debtor to revise the shareholders' settlement agreement which of course has been made a part of and is integral to the plan at section 12.6 of it.

THE COURT: But that's revised from the draft (indiscernible), to prepare it. It can't go into effect until the -- a plan's confirmed. It's just like the authorization that I gave to do the preliminary work on the trust.

MR. GUARD: But this Court's order today will likely foreclose arguments against those changes or arguments -- so that is our fear and that is why we --

THE COURT: No, I know that's your fear, but I think I've alleviated it other than by saying that I think, ultimately, although this is just in terms of my evaluation of whether the settlement is worth pursing or alternatively is, you know, colloquially a pig in a poke, the Debtor has a

better argument under 1123(a)(4); but that's not to decide the issue.

MR. GUARD: Yes, Your Honor. And quickly on fees and then I'll conclude my arguments. On fees, our argument is simply under the Bethlehem Steel case since the nine -- the difference between the MSGE or the AAC orders that you have entered pursuant to 363(b) where those committees were working for the benefit of all, here you have a committee or a group of people working that have benefited themselves, and under the principles of Bethlehem Steel, that we think that makes 363(b) unavailable, and I'll end the argument there.

THE COURT: 898 million to 1.398 billion seems to be a pretty big benefit for all.

MR. GUARD: And $277 million in -- Your Honor --

THE COURT: I understand, but I think one is -- we can all agree one's about 75 percent greater than the other. Look, I mean, I -- to me, the going forward work is quite equivalent, I think, to the basis for approving the work in Bethlehem Steel, and, frankly, approving the work to the AHG and the 15 non-consenting states, et cetera. It's to-do work that will enable a plan to go effective promptly and to negotiate the relatively minor open points like the intercreditor point on the collateral pending the appeal. As far as the latter work, I appreciate it's being sought

under 363 but to me, this is -- this really does fit into, I believe, the 503(b) case law, including the McLean Industries case and the Granite Partners case. McLean Industries is 888 B.R. 36 38-39 (Bankr. S.D.N.Y. 1988). The courts have always recognized a couple of different grounds. One is fostering and enhancing the progress of reorganization, of successful confirmation of the plan rather than being a pest and retarding it. That means, you know, working as a group to negotiate key terms and key documents.

The other is literally enhancing the estate which was McLean Industries, and yes, when you enhance the estate, there is some value that spills over to you and when you enhance the estate in a way that leaves you with more value than others from the estate, you may run into a different issue as far as the unequal treatment doctrine. But we're talking about the estate of course, and the estate's being enhanced here by a lot of money. So I'm really not that troubled by the payment of the fees.

MR. GUARD: Well, they had moving on a --

THE COURT: Put it differently. Two and a half million for 898 to 1.398 billion is a pretty good trade.

MR. GUARD: Your Honor, if there were -- under 503(b) and the fees were being limited to just what time was spent during the mediation, that would be one thing, but I

think the time period goes back further. And I understand the relative size difference point that you're making, but they did not argue for it under 503(b). And --

THE COURT: Well, I understand, but I'm comfortable with it because I think it would fit under 503(b), subject of course to what's in the term sheet, which is the level of review as to reasonableness that the AHG and others have. The -- clearly, the leverage here to get this agreement from the Sacklers came from the work that they did in objecting to the plan and appealing. That's where they got the leverage. Just like your group got its leverage by fighting so hard in the MDL and negotiating.

MR. GUARD: Your Honor, I guess I will conclude by saying, you know, after spending two and half years trying to act in the best interest of all states and, frankly, all creditors, you know, it is a shame that a relative few have chosen to do something that I think is going to cause massive harm inside and outside this case. And, you know, with that, Your Honor, we rest on our papers.

THE COURT: Okay. Again, I understand the frustration and there may be harm outside of the case, although that's something I really can't comment on, but inside the case, I just -- I'm looking at the numbers and I'm looking where the money's coming from and I don't see it.

MR. HUEBNER: Your Honor, not to respond to Mr. Guard, which I will do later when everyone is done, but I have something that is I guess a concession, because I think there's been some confusion but I think may make many objectors lives here and today shorter about some of your (indiscernible) with Mr. Guard. And so --

THE COURT: Okay.

MR. HUEBNER: -- I thought it might be helpful to do that. Your Honor, you had it exactly right and I want to be clear and this actually really -- I hope will others as well. This is not an 1127 motion. That would actually not be okay right now, because our plan is on appeal and you have no authority to amend it. Your view of what that paragraph of what our proposed order does is exactly right. It's mechanistic.

And if this order is entered today and if, as we hope and expect given the 83 decisions lined up on one side, the Second Circuit reverses Judge McMahon and we are clear for take-off, we will make an 1127 motion at that time to make the extremely minor and unbelievably favorable plan amendments that are reflected in this term sheet, to swap out the foundation promise for cold hard cash on day one, to amend -- get authority to amend the settlement agreement which is an attachment and incorporated to allow for an extra 900 to $1.4 billion adding that schedule and to deal

with the collateral issues -- that is not up today. And I think that's why we found the jurisdictional arguments so puzzling. So let there be no doubt to any objector, including Mr. Guard whose efforts I think I extolled at some length in my opening remarks as part of the group that got us a long way to where we are -- that's not today's relief being sought.

Today's relief being sought is extremely modest, the way Your Honor believed it to be with the 1127(b) hearing and obviously, we'll talk about -- we think the Code and the Rules and the cases are very clear on their face, that we will not remotely need resolicitation. I would imagine and I hope at that time that nobody will object to something whose benefits (indiscernible) outweigh by a factor a 100 (indiscernible) but today is not that day.

So hopefully, that concession about what the Court is not being asked to do -- and I think a lot people probably saw the absence of 1127 anywhere in our -- this order had read it exactly the way the Court did. I do hope that gives people comfort, that that issue will be back only when there is jurisdiction for it to be back.

THE COURT: Okay. Well, that's right. It's not a concession. I think it was implicit in the relief that was sought from the beginning, but I appreciate the reiteration of it.

MR. HUEBNER: Yes, Your Honor. You're right. It's a clarification. That's a much better word than the one I chose.

THE COURT: Okay. All right. So I see a couple people on the screen. I don't know -- before I hear from the AHG which also filed a -- not a joinder but its own limited objection -- again, I have noted all of the joinders and you should feel free to speak, but again, I've noted the joinders and you can also just rest on those. So I don't know who wants to go next.

MR. CAHN: Your Honor, this is Aaron Cahn. May I be heard?

THE COURT: Sure.

MR. CAHN: For the State of West Virginia. Can you hear me clearly, Judge?

THE COURT: Yes, I can.

MR. CAHN: Good. Thank you. This is Aaron Cahn of Carter Ledyard & Milburn for Patrick Morrisey, Attorney General for the State of West Virginia.

Judge, I want to say very briefly and I don't want to indulge in any of the precatory language if I may call it that about frustration and disappointment, whether or not the objecting states should be grateful for the increase that we did get and shut up about the rest of it. I don't want to talk about any of that.

I want to address the issue where the money's coming from. And you, Your Honor, and Mr. Guard discussed this briefly during Mr. Guard's presentation and I just want to pick up the trail from there and say that in point of fact and obviously despite the settlement that was entered into since everything is now open season again, there are potentially active fraudulent transfer claims that are maintainable against the Sackler family, and, please, Your Honor, please indulge me since we only received Debtor's legal argument two hours before the start of this hearing. I haven't had time to put anything in writing or perhaps make a more polished argument than I would have like to make.

So if Your Honor will bear with me, I only want to say that it's not at all clear to me -- I don't think it's clear to a lot of other people -- that we're not actually disposing of estate assets when the nine plus one takes close to $300 million of Sackler money. It's clear -- again, without doing the deep dive into the merits of the fraudulent transfer claims, it just seems on the surface with claims in this bankruptcy case exceeding -- well, we know they're in the trillions, right, because the states' -- the 50 states proofs of claim alone was in excess of $2 trillion and I am sure that the personal injury claimants and the other claims of the other 618,000 creditors would

dwarf that $2 trillion number. And this was accomplished over a large number of years with -- and many of the states, including West Virginia, having been in litigation with Purdue for probably 15 to 20 years prior to the start of this bankruptcy case.

So fraudulent transfers of corporate profits which very likely -- again, without doing a lot of -- without having the ability to do a lot more research than we've had the opportunity to do since the bulk of the money -- maybe all of it -- is -- represents corporate distributions or the proceeds of those distributions to investments and whatever. On the surface, there would seem to be a very compelling case that there are -- all the money that the Sacklers have or whatever hasn't been paid in taxes is recoverable as a fraudulent transfer.

Now, again, we're not here to litigate the merits. We can't litigate the merits of that claim, but I want to speak on this point to say that the assumption that this is just Sackler money, had no relationship to the estate and therefore the Sacklers can do what they want with it -- I don't think that's a correct assumption, and I think that ought to be seriously taken in account before we approve the settlement. This is not -- I'm not talking disappointments. I'm not talking about how angry or disappointed -- whichever word you'd like to use -- the various objecting states and

probably a lot of states that haven't objected. Sorry, Mr. Preis, I don't think anybody's silence, you know, should be taken as indicative of any position.

So this is -- I think this is a real issue, and I don't think we can assume that this is just -- this is not a (indiscernible), right. This is not an unrelated investor coming in to purchase a position. This is not like it was in the ICL and some of the other cases that Mr. Huebner cited in his brief. This is not a secured creditor making a bid and throwing a few dollars to the unsecured creditors in order to smooth the way to plan confirmation. This is not that.

This is a genuine problem where potentially recoverable estate assets are being diverted solely to the use of a small group of state creditors. And whether it be used for opioid abatement or not -- and by the way, I don't think anybody disputes that. I don't think it was necessary for any of the previous speakers to say that. We've all been operating on the assumption that all this money is going to be used for abatement or other relevant purposes. Everybody has been working towards that goal for the past two and a half years and in fact long before then.

But that's not the point. The point is, it needs to be -- this needs to be taken into account for a state like West Virginia -- and I hate to say this, Judge. I

really do but the fact of the matter is, we've all acknowledged, West Virginia is unfortunately the face of the opioid crisis with due deference given to all the other states who've also been massively affected. But West Virginia's sole focus during this entire case has been the allocation issue. We didn't object to the releases of the Sacklers. Our "no" vote on the plan was based solely on dispute with the (indiscernible) state allocation which as you, Your Honor, knows very well was more population centered that it -- than it probably ought to have been.

So West Virginia has scratched and clawed for literally every dime to try to increase its ability to deal with the very large segment of its own population that's adversely affected by the opioid crisis. So to see this grab -- the cash grab. It's a cash grab. I mean, if we're going to attribute silence -- give legal effect to silence -- I have to note that none of the nine have appeared on this motion. None of them have filed any papers in support and none of them have explained what considerations drew them to create this special fund. And again, if we're using Mr. Preis's interpretation of evidentiary rules, we could perhaps attribute that there was no reason other than the desire to glom some additional money when they had the chance.

So with all of that, Your Honor, and I apologize

for going off on a rant. I actually hadn't meant to do that. But the fact of the matter is that that there's a severe, in my opinion -- in our opinion -- a severe legal objection to Mr. Huebner has made the -- everybody provide -- there's a legal objection to the settlement and that is these are -- at least potentially -- estate assets that are going to (indiscernible).

THE COURT: Okay. But the key word here --

MR. CAHN: Thank you, Your Honor, for your indulgence.

THE COURT: The key word there, Mr. Cahn, is "potentially," and I'm not deciding that issue today. All I'm deciding is whether I should approve a settlement that enables that issue to be raised in the context of another billion to a billion and a half going into the estate and the 277 million into opioid abatement. This isn't -- as we just heard, and I'm not going to say it again -- a confirmation hearing. And ultimately, when people look at this more carefully, I guess they could come up with a rationale as to why the 277 million is estate property. I think others will probably say, well, but what we're back here on is a plan whose confirmation was affirmed, right, and that plan provided for 4.5 million and this is just better. And the people who settled their claims and the estate that settled its claim is -- really don't have a

basis to say we want more because they settled their third-party claims in the $4.5 billion plan and the estate settled its claims in the $4.5 billion plan. So the issue is -- I appreciate it -- is -- it takes some thought, but I could certainly see the rationale that the Debtors have given which is that this isn't really estate property because the fraudulent transfer suit was already settled.

But again, it's not an issue --

MR. CAHN: Thank you for the indulgence.

THE COURT: -- it's not an issue for today. The issue for today, should I approve this agreement which has three or four, depending on how you look at them, elements to be implemented now and the rest to be implemented either -- well, depending on the how Second Circuit rules -- either if the Second Circuit affirms the district court's opinion in which case there's going to be complete chaos and West Virginia can fight for whatever it wants along with everybody else, or the Circuit upholds the $4.5 billion plan except now it's a $6 billion plan, and confirmation issues will be decided at that point.

MR. CAHN: We're not interested in creating chaos, Your Honor.

THE COURT: I appreciate that. Your client came across to me as a very dedicated public servant. I get that, really. So anyway, I'm just responding -- I've

thought about this point. I actually was thinking about it before the briefing because I had to assume from reading between the lines in the mediator's reports that there was perhaps something like this issue going to raise its head, which it did. So I understand your arguments. I think they're arguments for another day, not for today.

MR. CAHN: Thank you very much, Your Honor.

THE COURT: Okay. So -- now the state of West Virginia did file a separate objection as did the AHC but -- so Mr. Eckstein, I don't know if you want to go next or --

MR. ECKSTEIN: Your Honor, good afternoon. I'm happy to let any other states that want to make any remaining comments do so and then I'll just try to wrap up.

THE COURT: Okay. That's fine.

MR. ECKSTEIN: Just didn't want to lose the opportunity.

THE COURT: So do any of the joining states want to add to the remarks by Mr. Guard and Mr. Cahn? Okay. I guess not.

MR. ECKSTEIN: Your Honor, in that case, thank you. Kenneth Eckstein, Kramer Levin, co-counsel for the ad hoc committee of government complainants and I appreciate the opportunity to make a few remarks.

I'm sure Your Honor appreciates from reading the motion and reading the pleadings that this is in fact one of

several very, very difficult issues that have come up in this case and it's interesting that we continue to have these complexities and challenges that come up even post-confirmation while we're in the midst of an appeal.

THE COURT: And I do appreciate that issue, Mr. Eckstein, and I think because of the difficulty of it, what the parties are focused on is roughly a 20 to 25 percent variation as opposed to a 70 to 75 percent variation or more. I have to believe -- I have no reason to know, but I have to believe that these same points which make the rather, I think, simple proposal by the Sacklers much more difficult, not because of the Sacklers, but because of the allocation issue. And I think that's reflected in the relative percentage of the SOAF versus the rest.

MR. ECKSTEIN: I think that's correct.

Your Honor, before making several substantive observations, I do want to take a moment to, number one, acknowledge on behalf of the ad hoc committee what we know as the prodigious efforts and commitment that Judge Chapman provided to this case. We know firsthand that the amount of time and effort and energy that had to go into throwing herself into the midst of a case of this complexity and challenge does not go unnoticed, and we have great respect for her efforts and dedication.

And the same is true for the Court and

(indiscernible) parties that I know worked very hard, and I know Your Honor appreciates that the ad hoc committee is one of several entities that has devoted its efforts as Mr. Huebner says, I think day and night for two and a half years to make a successful plan in this case. And I believe as the Court appreciates, the ad hoc committee has participated actively before Judge McMahon and has filed a (indiscernible) briefs in front of Second Circuit (indiscernible) an effort to try to make sure that this case ultimately is successful.

Your Honor also knows the ad hoc committee was instrumental in developing and implementing the various intercreditor settlements that Your Honor, in connection with confirmation, appropriately recognized (indiscernible) part of the building blocks of this plan. And I know Your Honor appreciates that Mr. Guard was a critical witness at confirmation and testified in support of the allocation and other settlements that were embodied in the plan and were important elements of the plan, and as Your Honor recognized, without which, this plan could not have been as successful as it was, notwithstanding the hopefully temporary setback that we've suffered along the way in connection with the third-party release.

So the reaction that Your Honor has seen to the opposal in this amendment should not come as a surprise.

There were certain principles that guided how parties approached this case. As Mr. Guard indicated, great care was given at every step of the way to try to enhance this estate as effectively as possible. Many, many parties had a hand in that, but one of the hallmarks of the plan -- all of the building blocks -- was that the plan was proposed, number one, with an eye for devoting all of the funds to abatement, which makes this plan unique; and number two, was done in a manner that provided the maximum amount of equality and openness and consensus as possible and that is why notwithstanding the controversy surrounding the third-party release issue, there was such overwhelming consensus ultimately for the extraordinarily complex plan, and it did not go without a lot of effort.

But that was a major achievement, and unfortunately, what we're being confronted is a significant impairment of one of the building blocks of this plan and this important to this case. That is important to the integrity of the way a bankruptcy case proceeds. The fact of the matter is, this is post-confirmation while an appeal was pending, but had this proposal come to the Court in connection with the confirmation hearing, I'd be hard pressed to think that the Court would seriously be able to even entertain this kind of relief. And the fact that it's coming up now one might (indiscernible) to suggest the facts

are different but the reality is, the impact on creditors and the impact on the (indiscernible) is not that different.

Mr. Huebner made, I thought, an interesting observation trying to crystalize why this is not really a big deal. He said had the Sacklers gone out and simply agreed with the nine to have paid them $277 million in consideration for them not pursuing their appeal, they could do so, but I think we all know -- Mr. Huebner knows as well -- that they couldn't have (indiscernible) in this case. This case was premised upon a preliminary injunction that has been in place for two and a half years. It's premised upon an agreement that the Sacklers made with the creditors committee and the Debtor and ultimately approved that they wouldn't divert assets, that they wouldn't go out and pay creditors away from the plan and away from the case.

And we all know that 80, 85, 90 percent of the assets that are going to be distributed to creditors through this plan are coming from the Sackler distributions, and so to suggest that somehow the Sacklers are paying $277 million away from this plan is -- frankly, I find it disingenuous. But -- I heard the argument but I can't go without a response that this case is about Sackler payments, and we all understand and what makes this difficult is, there is no question the benefits of this settlement are massive.

Of course, we all want $1 billion extra from the

Sacklers. It makes a previously outstanding plan that much better and everybody understands that including in the ad hoc committee and that's what makes this so difficult because we're faced with really a Hobson's choice. There's no good answer. Nobody wants to lose the benefits of the settlement. I understand that, Mr. Guard understands. Everybody on the ad hoc committee understands that, but there was a right way to do this. That is the way the NCSG negotiated these modifications was a model.

They negotiated improvements to this plan. They were material. They were done in advance of confirmation, that it did not involve separate payments. There are ways. There are ways to have accomplished to recognition confirmation. Your Honor, the ad hoc committee did not to Mr. Huebner. We were concerned that the term sheet when we read it indicated sort of an open-endedness and in the motion, the Debtor clarified that the fees only applied to outside counsel. The ad hoc committee had no objection to that. I understand before the motion was -- before the motion maybe was read carefully, initial objections got filed that included that point and I understand Your Honor's comments and I can understand the discretion of it, but that's not what this objection (indiscernible).

And there are ways in the Bankruptcy Code to provide for essentially compensation or recognition for a

contribution that was made by creditors to a case. This is not such a motion. This is not asking for substantial contribution or such other recognition, all of which would have probably not been controversial.

This is an attempt to essentially after the fact fundamentally change the way in which creditors are being treated under this plan and that is why Your Honor saw such broad-based objections and ultimately, we believe it is crucial that it be brought to the Court's attention as to where these objections stem. And I sympathize with the challenge of this motion and the objections because they're not easy and they raise difficult problems because as I said, we recognize the fact that, at the end of the day, this should be an -- this should have been an easy situation that would have been applauded.

The nine states negotiated an enhancement. The enhancement runs through the plan. It runs through NOAT. All parties would have done better. The Sacklers would have made a greater contribution, which was something that both this court and Judge McMahon encouraged. It would facilitate greater certainty at the circuit court level and I believe it would have been the -- an appropriate way to have capped off what hopefully will be the success of this case.

This is an unfortunate sort of chink in the armor

of where this case has developed and it unfortunately has provoked this kind of an issue that does go to the heart of the way a bankruptcy case proceeds as well as the broader issue that Mr. Guard raised about how settlements, particularly class action settlements that require predictability and stability of rules, how they're going get handled. It's unfortunately the case this kind of action rewards that kind of -- essentially, rewards poor behavior of grabbing for oneself, and it makes it difficult for parties to reach settlements.

Now Your Honor, I believe in the colloquy with Mr. Guard I thought had suggested -- at least it would seem to me potentially to be a path forward, and that is that this is not an amended plan and I agree with Mr. Huebner. This is not an 1127 motion. And the 1123(a)(4), I would agree, can properly be addressed when the plan is amended and it doesn't have to be addressed today. And I think that that may be the appropriate way to handle this, which is, to ensure that the payments are going to be available and to the extent it ultimately is determined that 1123(a)(4) is at odds with diverting 25 percent of this sort of enhanced payment away from the estate, that the Court can deal with it at the appropriate time.

And I'm comfortable seeing that as the path forward. I share Mr. Guard's concern that we don't want to

be inconsistent about it, but that could well be a possibility where we can move ahead with, hopefully, a largely consensual appeal. The estate will be enhanced and we can determine at a subsequent stage, assuming the Second Circuit reverses and we're in the position for this plan to go effective to deal with an amendment at that time -- I would agree with Your Honor it doesn't necessarily require resolicitation. We can address that issue at the time as well.

But I think the Court can consider the question and doesn't have to make those kinds of rulings today. But I do think it's important to not be -- I don't want to be disingenuous about essentially what that relief would mean. It would be two steps. I happen to think that two steps is appropriate, and I think that it would provide the best outcome for everybody. It would allow for the appeal to proceed the way we all hoped it would proceed. It would allow for the value to come into the estate and it would allow the nine to essentially try to be credited for the value that they're actually contributing and we could consider it in the context of the amended plan.

The only other two things we raised, Your Honor, in our objection, both of which we tried to indicate we thought were easily resolvable -- one was, to the extent any monies are going into a SOAF, we believe that the SOAF

should, in addition to saying the monies are going to be used for abatement, they should be agreeing that those monies are going to be applied consistent with the procedures that were carefully put in place by all of the states and all of the local governments for abatement. There was a very careful procedure. Each of the nine states participated in that process, and nobody objected to it. And it would be surprising to me if there was any disagreement about that, but that is not the term sheet was written and so we would ask for clarification of that. And at least as of today, we haven't gotten firm clarification, although, I know that in discussions prior to today's hearing there seemed to be growing consensus around this issue, and we think that issue could be clarified and should not be all that controversial.

The third issue --

THE COURT: Can I just interrupt you? I mean, to me, that's one of the reasons why the payment of the legal fees is appropriate so that people can talk about those very important issues and try to resolve the documentation of them. But go ahead.

MR. ECKSTEIN: But I would ask, Your Honor, that in connection with today's hearing, there should be clarification that, to the extent there are any monies that are going into a separate fund that's going to be created

through this case, that those monies should also be distributed consistent with the allocation and distribution procedures that were built into and made part of the plan of reorganization which was something that all states endorsed and all the governments endorsed and we shouldn't be creating more damage, it seems to me, to a structure that was already put in place.

THE COURT: Well, let me say this. That structure was approved by me with ample evidence from very credible witnesses, and there's a great benefit to that work already having been done. So I can understand, not only your position on that, but also Mr. Maclay's position on behalf of the MSGE group.

MR. ECKSTEIN: Your Honor, the last issue that we had raised, which again, I know has gotten some discussion and again, I -- I think we suggested in our papers, we thought it would be a relatively easy issue to resolve really went to the terms of the settlement agreement, in particular as to the sharing of collateral. I think as Your Honor knows, a lot of work went into negotiating with the Sacklers for collateral that would be posted to secure payments that were going to be made over ten years.

At the time, we only really had sort of two parties who were looking to receive distributions under the plan. The MDT was going to essentially be the party that

was supposed to be responsible for collecting the payments. They were going to then make payments to the private trusts and they were going to then make payments to the NOAT and payments were also going to the PIs, and that was all laid out very carefully and everybody had amounts that were being distributed on an annual basis.

If we're going to inject a new party, so to speak, into this -- a SOAF -- then it actually raises a fair amount of complexity that presumably will be reflected in the intercreditor agreement. (indiscernible) to make it clear that that significant interest in that, but one of the issues which I'll complete my thought -- one of the specific issues that we were concerned about was that there are some payments that are proposed to go to this SOAF that are early and then the bulk of the payments are being made in the later years, years 11 to 18.

And there's a very specific provision in the plan documents that (indiscernible) to enforce (indiscernible) collateral, and while all parties may have an interest in the collateral, we did not want there to be a suggestion that by enforcing -- if the MDT is enforcing against the collateral, that should not give rise to an acceleration of payments that are due in years 11, 12, 17, or 18, that the waterfall, so to speak, will not be ignored.

Obviously, if there's an acceleration and if there

is what we call the snapback and parties are pursuing their individual remedies, then at that point in time, people can do whatever they want and the plan preserves that and that would be true for all of the state. But in the event that there has not been a snapback and really looking to the collateral, that should give rise to an out-year payment accelerating its right and competing with early payment. (indiscernible)

THE COURT: Well, as you've noted, the settlement agreement doesn't spell that out. It contemplates that a proper intercreditor agreement is to be negotiated in good faith, and I think I tend to agree with you as well as the Debtors and the committee that that issue is kind of a high-class issue. If that were the only issue, I don't think there would be -- I think that would be resolved, let's put it that way. But the order that's being sought here doesn't lock in a particular result on that, although, I have confirmed that there's no contemplation of changing the first pay-out provisions for the personal injury claimants.

Okay. Thank you.

MR. ECKSTEIN: Your Honor, with that, I would rest on our papers and thank the Court for the opportunity.

THE COURT: Okay. Very well. Thank you. All right. I think I see counsel for the U.S. Trustee. Do you want to go next?

MS. EITEL: Yes, Your Honor. Thank you. Nan Eitel, Department of Justice and Executive Office for U.S. Trustees.

As set forth in the U.S. Trustee's brief, no one could really dispute that more money to abatement of the opioid crisis which OxyContin played such a major role is a very good thing, and we commend the nine and the parties for the resolve to get the Sackler family to give back more of the money that they took out of Purdue in its profits.

But I'm going to make I think a very different argument this afternoon than I thought I was going to make as of 11:00 a.m. and I hope the Court will bear with me because the sands have shifted quite a bit since then. There are legal impediments to approving this term sheet as set forth in the brief, but I think there are additional ones that arise as a result of the statements (indiscernible) today. I'm encouraged to hear Your Honor say that there would be a plan that have to come back before you at some point in time after the appeals are concluded and that confirmation objections are reserved and nobody's rights are being prejudiced by what's being done today. So that does eliminate some portion of the objection as filed by the U.S. Trustee.

But now I have the question of, why are we even here? Mr. Huebner went out of his way to say that this is

not a estate property. This is deal between two third parties, has nothing to do with the Debtor. We had the unsecured creditors committee say in paragraph 15 of their brief filed this morning that the parties -- that the Court's not being asked to police the conduct of third parties. And so do we even have related to jurisdictions --

THE COURT: Of course we do. This is a settlement whereby over a $1 billion is going to come into the estate -- into the estate under an amended plan.

MS. EITEL: Your Honor, but the Debtors want to have their cake and eat it too or pretend like this has nothing to do with the estate, and I would agree with you, it does have to --

THE COURT: They're talking about the 277 million.

MS. EITEL: Well, I -- and the 277 million like -- I know you disagree that Jevic is applicable here -- but the Sackler family doesn't care how the money gets distributed. They only care about what the value that get paid out.

THE COURT: In the first paragraph of Justice Breyer's opinion it says this was property of the estate and it was. It was a settlement of a fraudulent transfer claim. Maybe if the U.S. Trustee actually had money in the game it would understand these issues, but I don't think it does, because it doesn't.

MS. EITEL: Your Honor, I understand that you take

a different very view of these issues than the United States Trustee. I just want to make the point that I don't think it's definitive that the 277 million is a (indiscernible).

THE COURT: I agree with that but that's all the Debtors were talking about, is that amount of money.

MS. EITEL: And one of the difficulties that we find ourselves in today -- and this goes to the point about a future plan is -- we're in no man's land. We don't have definitive documents. We don't have definitive agreements. There are issues that are left to be (indiscernible) unless anyone thinks that not having documents is a hypothetical concern.

When the plan confirmation hearing started back in August, the Debtors were on their sixth amended plan. They took five tries during the confirmation hearing to get to a plan that Your Honor thought could be confirmed. By the time we got to the bench ruling in September 1, they still hadn't done it, not the way that the Court thought it should do, and you ruled contingent upon them filing a plan as you very much directed.

So I'm concerned that we are going forward on some kind of a term sheet that may or may not deal with the Debtors' property, that may or may not preclude rights in the future and determine things that are very important, and we don't have documents. We -- it's 1127 plan modification

motion. We don't have a new plan. We don't have a new disclosure statement assuming one might be needed. I understand the Court has not decided that issue yet and will decide it at the time that the Debtors make their propositions.

But the -- in addition to -- I understand you dispute the related to jurisdiction, but there's a Stern problem here too. If this is just a dispute that's being settled between the Sackler family and the nine states, then -- and there's no relationship -- it's not an estate cause of action, the Court could not adjudicate that, and so just as the Court could not adjudicate the Sackler family dispute with nine states, if it's truly not estate property, then how can the Court approve a settlement today that does precisely that? So I think in addition to the related to jurisdiction issue, that there's a Stern problem as well.

I'll just briefly touch on the arguments that were raised in our brief, Your Honor. I understand that you disagree and that you do not want to hear from the United States Trustee --

THE COURT: It's just such a fantasy. I mean, it's just not real. I'm sorry. At some point, the U.S. Trustee actually has to look out for the interest of people that are actually getting money under this plan and not just throwing up ways to kill it. This is just -- I just find

this reprehensible. I'm sorry. I have to say it. It's just not right to be raising --

MS. EITEL: Your Honor --

THE COURT: -- issues like, "we don't know this, we don't know that, we don't know something else." Well, try to figure it out.

MS. EITEL: Your Honor, if we had the documents we could but we don't.

THE COURT: I'm sorry.

MS. EITEL: That's the difficulty.

THE COURT: You know what? What is the difference between this term sheet and a plan support agreement? None. We have the documents.

MS. EITEL: Your Honor, there are --

THE COURT: The document's right here. It's the settlement term sheet. That's what it is.

MS. EITEL: Your Honor, going into today's hearing, it wasn't even clear that the Debtors were going to file another plan. Mr. Huebner had to clarify that. Again, it gets to the --

THE COURT: Of course, it -- well, I'm sorry. He didn't have to clarify it unless someone really wasn't paying attention. It was perfectly clear to me and anyone else who read this that this was not a plan modification motion. And so I don't really appreciate creating issues

when they're not there or coming up with hypotheticals or professions of ignorance as opposed to focusing on the actual issues before the Court and the money that would be going out to the American people.

MS. EITEL: Your Honor, we're not confessing ignorance and we're not making up hypotheticals. We have a very contingent deal here. It's neither fish nor fowl. We don't have all the documents. We have the outline of this--

THE COURT: Right. I've heard you on this before and you can know what I think about it. Why don't you move on?

MS. EITEL: I will move on, Your Honor. One of the findings the Court's being made -- asked to make is that no provision of this term sheet that's being approved contravenes the Bankruptcy Code. The Court can't make that finding because the term sheet still maintains the section 10.7 releases that were vacated on appeal and the district court says there was no authority.

THE COURT: It's -- we -- were you listening at the beginning of the hearing? Apparently not. It's contingent upon the reversal of the district court's order and therefore, necessarily is --

MS. EITEL: But the entry of the --

THE COURT: -- contingent upon a finding the releases are proper. Period.

MS. EITEL: Your Honor, the finding that you're being asked to make in the proposed order today is that no provision in the term sheet --

THE COURT: I know the finding and I've just said what it consists of. Move on. I already clarified this with Mr. Huebner at the beginning of the hearing two and a half hours ago.

MS. EITEL: Your Honor, for the same reason that the term sheet contravenes the -- excuse me -- the order asks the Court to make the finding that it does not contravene the Code, then they don't make it contingent on that. The rest of the deal is contingent. The rest of the deal is contingent upon them ultimately prevailing on appeal, but there's -- one thing that nobody's --

THE COURT: The term sheet itself is contingent upon that in multiple places -- on the approval of the -- the grant of the appeal by the Second Circuit and confirmation of a plan.

MS. EITEL: Your Honor, I'll leave it at this. It's not clear based on the shifting sands today whether --

THE COURT: It's clear to everyone except the U.S. Trustee and I think that's because everyone else actually has money in the game.

MS. EITEL: Your Honor, Congress created the United States Trustee for a reason because --

THE COURT: I understand and I think that there's nothing wrong with what the U.S. Trustee generally does. I do think that in this case, the U.S. Trustee should be asking itself one simple question. Does it want to be fighting about the potential reversal where there's 4.5 billion for the American people or does it want to be fighting about the potential reversal where there's 6.5 billion for the American people?

MS. EITEL: There's no doubt --

THE COURT: Or does it just want a reversal period? Or does it want chaos? It should be asking that question and be acting accordingly.

MS. EITEL: The United States Trustee in no way wants chaos and the U.S. Trustee also finds it very (indiscernible) objected to have additional money to abate the opioid crisis, but Your Honor, I will end with this. The ends cannot justify the means. The most noble goal and the most (indiscernible) cannot eviscerate the Code. That is simply it. There are rules that are set out in the Code and the parties need to abide by them, and as we sit here today, we have no plan and we are awaiting a result of appeal and the Court is being asked to do something that's very unorthodox.

Again, the rules matter. The Code matters. The rule of law matters and I am sorry that that is really so

irritating to everyone here but that's the role of the U.S. Trustee --

THE COURT: I believe I am applying the law, ma'am. What I'm asking you to do is to focus on the actual facts as opposed to raising what I believe are willful statements that you don't understand what's going on and arguments that simply just don't make sense like the Court doesn't have jurisdiction. It just doesn't -- it really -- it doesn't make sense.

MS. EITEL: Well, it doesn't make sense for the Debtors to want to have their cake and eat it too. They want to pretend like this has nothing to do with the estate but they want the Court to exercise 363 authority to approve the deal because it's using property of the estate. I mean, there is some portion of this that should either just be struck and not approved by the Court because it has nothing to do with the estate or it's just -- I find that incomprehensible and with that, Your Honor, I rest.

THE COURT: Okay. Very well.

All right. There were other objections. There were -- there was an objection by the committee and creditors and there was an objection on behalf of certain -- objections -- on behalf of certain personal injury claimants. So Mr. Underwood, do you want to go ahead?

MR. UNDERWOOD: Certainly, Your Honor. Thank you.

Good afternoon, Your Honor. This is Allen Underwood of the firm of Lite DePalma Greenburg & Afanador on behalf of certain Canadian municipal and first nation creditors.

First I want to make clear, Your Honor -- thank you for your time today, by the way -- but also to make clear, the counsel for the nine states have done a remarkable job in this case, and the document that we filed is not a direct opposition to the settlement that is proposed here or the result of the settlement in principle. I think where the Canadian creditors are coming from today is entirely different from the position that every other creditor has -- that has objected has come at this issue.

Everyone else seems to be interested as to where the funds are ultimately going, how they'll be distributed and so forth. Our question really has to do more with the source of the funds for this settlement. And obviously, disclosure is the hallmark of bankruptcy. The source of these funds are clearly insider related funds. Mr. Huebner stated repeatedly that this is the Sacklers paying from their own funds, the Sacklers paying with their own assets.

The fact of the matter is, it's unclear from the documents that were filed exactly -- exactly, I think -- where these funds are coming from. And the crux of the Canadian objection and at its heart is simply that there is a -- it's not in the term sheet. It's in the application

and it states the Sacklers will pay an additional 723 so forth billion dollars to the MDT to an additional 500 million consisting of 90 percent in the amount at which -- that's if (indiscernible) net proceeds from the sale of the IACs exceed $4.3 billion.

Now if were we to look at the IACs on a global basis, that's fine, but there is an exception, I think, which should apply here with respect to Canada because the Canadian claims or the causes of action the creditors have in Canada have been restrained. The matter is subject to a CCAA proceeding in Canada and it's subject to a related party order in Canada. So the Sacklers have had the benefit of certain protections over these --

THE COURT: Well, can I interrupt you, Mr. Underwood, because I think this is really a question to ask the Debtors. Is it intended that this settlement modify or violate any order that's in effect in the CCAA proceeding in Canada?

MR. HUEBNER: Your Honor, the answer clearly is no. Nothing -- I mean, the order asked really for no relief with respect to the 277 except that it doesn't violate the Bankruptcy Code. I'll talk about that in a few more minutes.

Mr. Underwood's concern that somehow this is giving license to a fraudulent transfer in Canada or evading

Canadian law or applicable judicial rulings -- we don't -- we didn't understand the argument. Obviously, there can't even be a legitimate claim (indiscernible) something in the one line that is relevant to this in our order permits the Sacklers to violate non-U.S. law or non-U.S. legal proceedings. There's certainly nothing remotely supported (indiscernible) to the contrary.

THE COURT: Okay. And frankly, it wouldn't violate -- I mean, that's how I took it. Well, I read this objection to maybe saying two things, Mr. Underwood. The first was the one that I asked Mr. Huebner about which is, is this addressed -- is this relief addressed in any way to any order of the Canadian court and the CCAA? And I think clearly the answer is no. I wouldn't grant such relief. I don't have the power to change those orders, but I wouldn't grant such relief.

Secondly, I don't view the relief that's being sought here as overturning applicable non-bankruptcy law as far as, you know, fraudulent transfers, preferences, et cetera. That's not what's being sought here.

MR. UNDERWOOD: No, I understand, Your Honor. I think the concern ultimately is -- and I think it's a representation that the Sacklers and the Debtors could make is that they're not going to employ Canadian funds as opposed to global funds --

THE COURT: No, that's a different point. That goes too far. But I think a legitimate point is that this doesn't override the Canadian court's orders or applicable non-bankruptcy law as to transfers.

MR. UNDERWOOD: All right, Your Honor. Thank you very much. I appreciate your time.

THE COURT: Okay. All right. I'm not quite sure who's next.

MR. TATE: Judge, I'll -- I guess I'll just go next and I will be extraordinarily brief. I'm here because I represent 35 unions. That's over 100,000 union members. I represent 69 incorporated government entities on Long Island. That's a population of about 3 million folks. I represent a number of hospital authorities and a number of entities -- governmental entities -- in New Jersey. And New Jersey, of course, is a very proud -- in a very proud position right now because of work that a number of good firms did to get them up to 100 percent participation level of the MDL National Opioid Settlement deal.

I filed my objection. I want to narrow it just to a couple of things. First of all, I'd like to -- in addressing and modifying the objection that I filed on behalf of my clients -- note that we do not believe that there is a problem with the lawyers who represent the nine in getting paid. There are two concepts that I love more in

life than many things that I should probably love more, but I love the concept of more and I love the concept of right now. And I think those that work so hard to make those two concepts come to fruition -- I think they should get paid.

Our sole issue and sole problem here is, given the populations that we represent and the number of folks that we represent and the entities that we represent, we believe that the increasing -- and the increase, the amount of money being paid by the Sackler family, especially in this situation where there may be some issues about enforceability of judgments against them -- we think it's great to get more.

On behalf of my clients, we simply believe as many do who have objected that the money obtained by the nine should be distributed according to the plan that this Court approved and is now up on appeal. And that's why we filed our objection and that's what we're urging here. And obviously, the Court has discretion to determine what's done here and we respect that but on behalf of my clients we were simply compelled to raise that to the Court. And I appreciate you -- I appreciate the Court allowing us to have the time to make these statements.

THE COURT: All right. I read this objection and it has a long footnote listing the clients, and I did want to ask you, they seem to me to fall into three different

buckets. I may not -- I may be wrong about that, but the class in which the nine states and the District of Columbia that would be sharing in the 277 million reside is class 4, which is the non-federal governmental entities.

I may be wrong, but I think, while some of your clients fall into that class, others don't. Am I right about that?

MR. TATE: Yes, Judge, you are correct about that. The Court is right, some of them do not fall into that class, and I understand that to the extent that they were dropped in footnote which is a lengthy footnote which I detest seeing on this, but the Court is correct that not all of them fall into that class. And, obviously, our objection should be modified in that regard and I'm happy to do it in writing or do it here on the record.

THE COURT: That's fine. I do think the law is clear. In fact, I think the statute's clear that if one were to be objecting --

MR. TATE: They got to have standing.

THE COURT: They would have to have standing, and therefore they would have to be in class that's affected by the carve out and some are and some aren't.

MR. TATE: That's correct, Judge, and we can clarify that.

THE COURT: All right.

MR. TATE: They were listed in that fashion simply as an anchor to windward and that's done.

THE COURT: I just -- the authority for that stems ultimately from Kane v. Johns-Manville Corp, 843 F2d 636, 654 (2d Circuit 1988). There's another case that's even more on point on the classification issue which is 1199 SEIU National Benefit Fund v. Akorn Industries -- I'm sorry -- U.S. Inc. -- I'm sorry -- Akorn, Inc., 2021 U.S. Dist. LEXIS 108 -- I'm sorry -- 180788 at page 33 (D. Del. September 22, 2021), and 7 Collier on Bankruptcy at paragraph 1123.01(a)(1)[4][B] also says it. But you got it.

That's no -- I understand we're on the same wavelength. And on the other points, I think it's -- I'm not going to -- I think it's the same points that I've raised with Mr. Guard and Mr. Eckstein and Mr. --

MR. TATE: Judge, it indeed is. I'm simply making those statements on behalf of my clients.

THE COURT: Right. That's fine. Thank you.

MR. TATE: Thank you, Judge.

THE COURT: Okay. There were other objectors. I don't know if anyone else wants to supplement their objection or have oral argument in addition to their objection? I read each of these objections, again.

MR. OZMENT: Your Honor, this is Frank Ozment. In relation to your comment regarding Mr. Tate's clients, I

acknowledge that Stacy Bridges and Crayton Bloyd and Charles Fitch are not secured creditors as we noted in our footnote. We have -- hope to achieve that status in one form or another. Thank you for clarifying the impact of today's hearing regarding issues that would otherwise be adjudicated under 1127.

In that regard, I would like briefly to add that I think what you will hear tomorrow which will likely be a very painful day of testimony or at least remarks is that many of the people who are testifying or speaking about their experiences as survivors of people who died from opioid deaths or opioid overdoses would give everything if their clients or, I'm sorry, their family members had had adequate treatment. And in the event that there is some sort of reconfiguration regarding how this money -- additional money -- is to be spent, I think that ought to be taken into account.

I think the other thing that you'll hear from them in all likelihood tomorrow is that many of them, you know, supported confirmation or at least did not object to confirmation because they thought this is as good as it gets. If it gets better, I think they'd like to see more benefits going directly to those claimants who are opioid use disorder victims in active recovery. But that's all I have.

THE COURT: Okay. Well, I will reiterate the standing point. Your clients are not in class 4 and therefore the equal treatment issue wouldn't apply based on the same authorities that I previously cited, and when we do get to 1127, I just want to point out to people that as long --

MR. OZMENT: I understand.

THE COURT: -- it's not being taken away from you but really added into what others are getting, it's not really a material adverse modification.

And the other thing I'll say is that I think it is important that the roughly 20, 25 percent of this settlement that is not going into the NOAT trust, which is clearly a trust for abatement, treatment, et cetera, is also to be dedicated as I've read a couple times from the term sheet and I think this is -- it's worth repeating -- "shall be devoted exclusively to opioid related abatement, including support and services for survivors, victims, and their families."

As Mr. Eckstein said, hopefully some flesh will be put on those bones to clarify the nature of that. But that is an important promise that the states do not have to make, and really has not been made until this case. So, thank you, Mr. Ozment.

MR. HUEBNER: Your Honor, if now is the right

time, I think that (indiscernible) common benefit, it would probably make sense to spend a few minutes addressing, in brief, a few of the items raised.

THE COURT: Okay.

MR. HUEBNER: I think it will also give parties comfort and we minimize future discomfort.

THE COURT: Okay.

MR. HUEBNER: Let me begin with Mr. Guard, for whom, as I believe, I made clear at the outset. We have enormous respect and full well understand his extraordinary efforts for many years. First of all, with respect to the joinders, I actually believe that I said it in an appreciative way as opposed to getting it from two different briefs, there were joinders and I certainly have no problem with that and, in fact, we appreciate the courtesy of Mr. Guard framing the issues earlier for the Court and the other parties who, in fact, accorded with his articulative objection filing joinders instead of xeroxing it or putting it on the word processing systems and filing any one of them. So, I do want to be clear, I intended that somewhere between mutual and thank you, but it's not otherwise perceived.

Number two, Your Honor, Mr. Guard suggested that Your Honor could simply not rule today because if there's no problem if the Second Circuit briefs get filed because we

could just figure stuff out later and maybe cut a different deal. With all due respect, that is not the Debtors' deal. The reason we moved to shorten notice, which nobody objected to, is precisely because we believe quite passionately that having this ruling today or tomorrow -- tomorrow, not today, after the rest of the hearing happens and before the briefs hit the docket, is actually of great importance in terms of having the Second Circuit understand where things lie and the like and I'll just leave it at that. I think it's pretty obvious why, I think it's, nine briefs filed by sovereigns is different than having filed at some point in the future.

THE COURT: Well, it locks --

MR. HUEBNER: With respect to --

THE COURT: I mean, I think, equally important, it locks in a billion -- a billion to a billion and a half dollars. I mean, that's --

MR. HUEBNER: I was going to get to that next.

THE COURT: All right.

MR. HUEBNER: Which is, the estate is giving up nothing other than the payment of a few million dollars of legal fees in exchange for locking in, hopefully, $1.4 billion to be distributed under the Plan and a higher and hopefully faster probability of success on the merits of the Second Circuit, which every single party in the entire case,

except for about 12, now, we believe, is aligned with. Your Honor, with respect to the arguments made both by Mr. Guard and by Mr. Cahn with respect to, maybe this isn't really the Sacklers' money, there actually is a Code provision that actually governs what is property of the estate. And 541(a)(3) is quite clear that once property is recovered by the Debtors, it becomes property of the estate. But 541(a)(4) is clear, that is that if property is preserved or transferred to the estate, it becomes property of the estate. So, there's a very interesting argument one could have whether the Sacklers' first $4.325 billion is already, somehow, property of the estate because we have a settlement, but for worse or for better, they've reported that they have many billions in excess of that.

And the argument that right now, with a settlement that, whose primary economic terms are not objected to by actually anybody other than the nine, but all of the rest of the Sacklers' money, out of which they're paying the 277 is somehow already the estate's money and that therefore, maybe they're paying the 277 out of the estate's money is just not -- it's not the law because there are Code provisions that are directly on point. So more importantly, we all agree, including every single objector here today who spoke, to accept $4.325 and to accept that as the settlement and to now say -- and Mr. Cahn pointed out that West Virginia

objected, only to the allocation. We confirmed yet again today that that objection was resolved and that they had no problem with the $4.325. So, to now come and say, but maybe the other $277 million is also currently owned by the estate and is deemed settled and paid for with estate funds is simply a dissonance that I think cannot be allowed to stand.

THE COURT: Look, I think if what were being settled in this settlement agreement were not only the third-party release issues, but the estate's fraudulent transfer claims, it would be a different story, right? We agree on that.

MR. HUEBNER: Exactly, Your Honor. That's my point. The estate claims, which are ours, were settled several months ago, with universal creditor support, and the only issue left was a small number of parties asserting that their separately owned claims could not be resolved without their individuated consent, and nine of those parties have now settled that. Mr. Guard's next point that, as a bankruptcy policy matter, something about the resolution that was reached encourages side-deals, leads me to, sort of, two different streams of thought. One is, with respect to bankruptcy policy, Your Honor, it is very often the case that individual creditors of a debtor also have different rights against third-parties. They have guarantees, they have LC's, they have keepwells, they have intercreditors,

they subordination agreements, and the like. And the reality is that right now, the nine were differently positioned than others and they cut a deal that on the main, is of inordinately majority benefit to all creditors and also contains a benefit for them. I would note the irony that had the almost universally supported confirmation order not being reversed, the ability to do that would not have even existed, which is why we believe so passionately that third-party releases in very rare circumstances were appropriately justified and are actually critical to bankruptcy policy because they prevent the problem of -- why don't we just say the differentiated holdout party.

Your Honor, with respect to what I'll just call the penumbra of 1127 issues, I'm going to combine a couple of objectors here and I don't have many points, just so the Court knows. You know, you can read our motion and order as many times as you want, you won't see a reference to 1127 in the relief requested, you won't see any provisions in the order that allow for and direct or permit the amendments to the plan. Like, for example, swapping out the foundation promise for cash on the Effective Date, which is a plan amendment. It's just not there, and it's not there for a reason. We've looked very hard at the caselaw and went back and forth about whether, at this juncture, it was appropriate to keep the 1127 relief on a contingent basis

and decided that it was not, that the better view was to ask for as little as possible of the Court today.

And when the time is right, I want to be very clear about this, if the Second Circuit reverses judgment matter or more importantly, the Second Circuit affirms Your Honor and simply says, "Clear for takeoff. Confirmation order is back in force," we will then make an 1127 motion and it will be seeking extremely modest relief, I guess, of the sort. There is an unthinkable benefit to everybody because it will swap the foundations for cash, it will add $898 million to $1.398 billion of new money. It will -- it'll address some technical weaving this into the deal issues, there's a (indiscernible), it's actually more complicated, but that's just a corporate law thing that people who need to, already know what needs to be done, and it will allow for the collateral and then we will have the discussions that were referred to by Mr. Preis and Mr. Eckstein. If somebody wants to object to that and say, "No, we don't want $900 million to $1.4 billion", or they believe that somehow, they're maybe worse off by the estate getting hopefully over a billion dollars more to save American lives, they are welcome to make that objection at the time and we look forward to addressing it for whatever court is going to be there to hear it. But today is not that day and there are no shifting sands of any kind.

With respect to Mr. Eckstein, just really want to just choose very quick, tiny points. Number one, with respect to the mutiny issue and this blends also with the U.S. Trustee's point, the 277, as I've now said about 40 times in 40 different contexts, is not the estate's money, it's not the Debtors' money. And so, I don't know that the Court has the right and I don't think anybody's requested that the Court order how the nine spend their money. The good news is, we're almost all the way there on these sub-issues. Obviously from the beginning, it was a big news because we were not agreed to move forward with something and I think it was a shared vision, as it has been for two and a half years that every dollar that doesn't go to victims goes to abatement related issues. Most of the states have already confirmed among the nine and it's a little bit more complicated, but in broad brushstrokes, that they'll be using the money more or less consistent with or similar to or the like. The issue is that they're threading state law issues and that's why that's not already there in black and white. But the social goals, I actually think are shared by everybody. But to the extent possible, there's going to be a fair involvement because the Court's stay its active part through localities and boots on the ground and the like. And then on to the U.S. Trustee --

THE COURT: Can I interrupt you on this point? I

agree with -- that makes perfect sense to me. I understand that point. I do think that, to avoid second guessing in the future, they -- and I trust this is what people will be focusing on, will probably want something fairly carefully drafted either in supplement to the plan or an order so that some person who says, "Well, you're not doing it right, you're unauthorized to do this, you didn't agree to do this, you agreed to do something else, and we disagree with it" -- I think they'll probably want that, the parameters of what they agreed to do laid out, and I think that's part of the work that needs to be done and it's part of why the Debtors are agreeing to pay attorneys' fees to focus on things like that.

MR. HUEBNER: And Your Honor, I firmly can't over speak for the nine. They are certainly not my clients, but I think the general (indiscernible) issue appears to be one of shared vision. I mean, I am confident that that will get worked out.

THE COURT: Okay.

MR. HUEBNER: The U.S. Trustee raised, I guess, both Stern v. Marshall and jurisdiction issues. Those, I don't think, need much time. To be fair, Stern v. Marshall has no applicability when there is consent when coming before the bankruptcy court. And to the extent that there are parties to the legality under the Bankruptcy Code, which

is a uniquely Bankruptcy Code issue, it is the nine, the Sacklers, and sort of the Debtors, have clearly consented to this being brought before the Bankruptcy Court. So, I can't, for the life of me, understand how there could be a Stern v. Marshall problem when the affected parties consented. I would also note, for the reasons we put in our briefing to the District Court, to the Second Circuit, this is a "mini-me", as it were, of the much larger issues, for which we believe passionately certain Stern v. Marshall issues in the first place.

With respect to general jurisdiction, I would just note that one need not actually look farther than Judge McMahon's own ruling, which ruled for the Debtors down the line on jurisdiction and noted that SPV Osus says, the governing Second Circuit law says, that if something has any conceivable effect on the Debtors, jurisdiction applies. Having nine briefs not filed on Friday, an appeal in which hundreds or thousands of American lives, not just money but lives are probably at issue through the good that the creditors in this case hope to do, coupled with getting $900 to $1.3 billion more money to save American lives through the Plan's existing allocation mechanics, we think we don't have to say much more about their being any conceivable effect on the Debtors' estates.

Your Honor, I don't even really understand the

sort of (indiscernible). Honestly, the 277, as I've described before under 541(a)(3) and (a)(4) and the existing plan, the settlement of estate claims, it's not the Debtor's money. There's nothing remotely even intellectually interesting here, but the states will not stand down from filing their briefs on Friday unless they are given some comfort in this Court and this not view these payments as violating the Bankruptcy Code, and given that we had a bunch of objections whose motivating emotion we not only fully understand, but we agree with and empathize with, was exactly that and actually proved why they were asking for this ruling/comfort order.

And Your Honor, in that respect, I should note that similar arguments were raised with respect to the PI Order in particular that Mr. Eckstein raised at the time of the DOJ settlement and Your Honor actually held two lengthy hearings that addressed, including among other things, whether the Sacklers open public settlement with the DOJ for $225 million implicated, or worse, violated, the anti-secretion provision. You issued an order on November 18, 2020, entitled, "Order Confirming the Payment by the Sackler Families Under Settlement with the United States Department of Justice is not prohibited by this Court's Preliminary Injunction," and the second paragraph says that exactly. So, just so that everyone understands, we thought about all

these issues and obviously got ourselves comfortable.

We would never ask relief of any court, let alone this Court who has labored with all of those for two and a half years, to do the right thing here, but we did not think it was appropriate and we think this is, frankly law of the case, not as a settlement with the DOJ at the time and hopefully (indiscernible) had tremendous benefits for the estate. This is a settlement with nine states, of which we believe the same is true. The Court went on in that order, because the fraudulent transfer claims had not yet been settled, to put in place, sort of, "but this and if then, if X then Y," none of those are actually applicable anymore now that the claims have been settled and the Sacklers are pursuant to, sort of, a universally supported settlement, no longer have -- in other words, I think, clearly now have assets that we have agreed to cease litigating to obtain in exchange for the settlement of the same claims. But I do note that, I think, there's a (indiscernible) case issue on the PI --

THE COURT: Well, let me -- I mean, we talked about this at the beginning of the hearing. Again, the settlement agreement says that the approval order shall state that the agreement doesn't contravene any provision of the Bankruptcy Code, and it doesn't say "any prior orders in these cases." If the Circuit grants the appeal, I don't

believe that this settlement would contravene the preliminary injunction, and I am familiar with the preliminary injunction. I do think, though, that if the Circuit does not grant the appeal, but upholds the District Court's Order, you would need those --

MR. HUEBNER: It never gets paid, Your Honor.

THE COURT: No, but you -- well, I don't think it would get paid, but -- except for Paragraph 11, which is a --

MR. HUEBNER: No, Your Honor. No, let me make your life a lot easier. This is the very rare reverse Catch-22. It's like a tautology that there can't be a problem. If we're cleared for takeoff, the 277 gets paid as part of us getting our money and the Sacklers have the other billions. If the Second Circuit says, "No, you're not allowed to emerge," the 277 never gets paid. It's -- it can never be an issue. The provision of Paragraph 11, Your Honor, does something very different.

THE COURT: Okay.

MR. HUEBNER: That says, if you make a ruling or an appellate court reviewing were ruling, today finds that, for some very specific reason, they can't pay the 277, we'll just find another pathway to get a different order, but in all events, that's all still entirely contingent on the plan going effective. And if you look, Your Honor, in

"Implementation" in Arabic 1 at the end, as Mr. (indiscernible) notes to me, you'll see it in black and white, but again, I'm happy to let you take my word for it and represent --

THE COURT: In Paragraph 2 of the Implementation, it says, "-- other than as provided in the provision beginning, 'if any payments above," which is Paragraph 11, "this Agreement shall be void --". But what you're saying is that Paragraph 11 just deals with -- it does, in the first sentence, the reversal of my order on this motion --

MR. HUEBNER: Yeah.

THE COURT: -- not on the -- not if the appeal is denied.

MR. HUEBNER: Correct, and right above 2, at the very end of 1, it's all contingent upon entry upon approval order and consummation of the Plan.

THE COURT: Okay.

MR. HUEBNER: That's what the Court is here looking for. If there's no -- so it's literally impossible that the 277 gets paid out of money that the Debtors might have a right to because it only gets paid when the Debtors and their estates get 5.5 to 6 and the Sacklers keep the balance, etc.

THE COURT: Okay, well I'm glad we've cleared that up. I guess --

MR. HUEBNER: Well, with respect to --

THE COURT: So, again, I'm uncomfortable with saying it doesn't violate any order I've entered, because I haven't looked at all my orders. I don't believe it would violate the preliminary injunction.

MR. HUEBNER: I actually believe, based on emails that we're getting in the background, that that actually is what people were actually looking for now that we've all had some colloquy about it.

Your Honor, I don't think I need to say anything about Canada. I hope that we've all relayed --

THE COURT: I don't think you need to do either. I think that's been clarified to Mr. Underwood.

MR. HUEBNER: So, I only have two final things to say. Number one is an error side point because I think that as people think about this (indiscernible) matters and I actually have a whole module that I threw on the floor and I'm not doing. But let me just give you numbers to think about because they're helpful. At the low end, Your Honor, if you think of the 277 or you think of the SOAF payments as "side payments" or off the top or commission or whatever the objectors call it, of the larger settlement, (indiscernible) the way that you reference it works, is that it's somewhere between 13.4 percent and, at the ultra high-end, if every decision is made in the direction of someone who is upset,

27.7 percent of the consideration. So, it's not 25-30, it's not 30, there is a range depending on -- because for example, even the 277, 52 of that would have gone to these nine states and New Hampshire had it been distributed under NOAT, so 277 is actually 225.3, but again, I'm not going to --

THE COURT: That's a good point. I guess I didn't take that into account when I was saying 20 percent or 25 percent. (indiscernible)

MR. HUEBNER: Correct, and that's my point, Your Honor. If it's, you know, the net extra, as it were, of 225 out of, you know, the total consideration is actually 13.4. If you view it as 277 full, with no crediting and you only say there's a (indiscernible) because of the foundations, etc., at the ultra high-end, it's 27.7. The (indiscernible) priced somewhere in the teens, I think if somebody was a mediator what they would do.

Your Honor, I have two final things to say and I --

THE COURT: Before you do that, I want to clear up one point, which came up from something you said earlier in your argument. You mentioned tomorrow, when I will be hearing statements by people who've been affected by OxyContin. I may be wrong about this. I looked through the settlement, though, a couple of times. I think that the

scheduling of that process was at the request of Judge Chapman in her Mediation Report, which I am happy to do. I think it's important, very important. But I don't see it as a continuation of this hearing. I see it as an element of the settlement agreement. I don't think it's evidence for this hearing. And that's important because I am ready to rule today on your motion, but I want to -- maybe I'm missing some provision of the settlement agreement that says that this has to happen before the Court rules on the hearing. I thought it was actually an aspect of the settlement.

MR. HUEBNER: Yup. Chairman, let me address that. I see (indiscernible) popping on, but hopefully I will address the issue for you and if not, (indiscernible) speak as they need to. Your Honor is exactly correct. It is actually not found anywhere in the term sheet. It was not part of the formal agreement among the mediation parties. It was exactly as Your Honor notes, I believe Paragraph 14, if my memory does not fail me, of the Mediator's Report, which she very strongly recommends it. I believe, and actually (indiscernible) Mr. Preis who was previously not on, I believe very strongly, I hope I'm right, that this is not evidence tomorrow because these people are not represented. They are victims who have agreed and want to tell their stories, their life and their traumas and their

concerns and their pain, and they want to tell it. The Sacklers are watching and listening. But that's not the same, I believe, as a witness presenting evidence in support of a motion because I actually don't think this testimony is in support of this motion. How I know, many of them love the motion, but two don't. I don't think that's what they're here for. But Mr. Preis, can I ask please, since you have always been a primary shepherd of many individual victims and circumstances like this, whether that is your view, because it's actually much more important and accurate than mine?

MR. PREIS: Your Honor, did you want --

THE COURT: I could barely hear you. I'm sorry.

MR. PREIS: Did you want to say something, or did you want me to answer?

THE COURT: Well, the question is, I don't -- I don't -- Mr. Huebner, in his closing remarks, said that day 2 of this hearing or, I wouldn't be ruling on this motion until I heard tomorrow's presentations. And I'm not sure that's correct. I think that tomorrow's presentations, although perhaps definitely agreed to by the Sacklers, isn't in the settlement agreement, but I think it is part of the settlement. It's a recommendation by the mediator that the parties to the mediation have agreed to, and the key point is, I don't think it's evidence. I think it's part of the

settlement and consequently, I could rule today on the motion before me.

MR. PREIS: Okay. Thank you, Your Honor. Yeah, I've heard that question. The people who are speaking tomorrow -- can you hear me, Your Honor?

THE COURT: Yes.

MR. PREIS: Okay. The people who are speaking tomorrow do not believe that they are testifying.

THE COURT: Okay. That's my understanding too.

MR. PREIS: They (indiscernible).

THE COURT: Okay.

MR. PREIS: Okay, but they did believe, because that's what my understanding was -- they did believe that they were part of the hearing on the settlement. If that's not the case, that's perfectly fine. I just -- I wanted -- so that I know what I should tell them, I'll be guided by Your Honor.

THE COURT: I view their presentations as an element of the settlement, not that they necessarily have to agree to the settlement, but it is something that the nine states and the District of Columbia and the Sacklers have agreed to. And if they're willing to do it, meaning that those speaking are willing to do it, I am very willing, very happy to hear them. And it's important, it'll be part of the record of the case, but I don't think it's evidence for

the settlement.

MR. PREIS: Understood, Your Honor.

THE COURT: It doesn't, by any means -- it doesn't, by any means, limit the impact of what they're going to say. It's just the context is not as evidence for this settlement.

MR. PREIS: Understood.

THE COURT: Okay.

MR. UZZI: Your Honor, Gerard Uzzi from Milbank on behalf of the Raymond Sackler Family. Can you hear me, Your Honor?

THE COURT: Yes.

MR. UZZI: So, this doesn't change, I think, the practicalities of what you said, but just for precision, you're correct that this is not in the term sheet. So, what's going to happen tomorrow is not, in fact, part of the settlement. So, I don't think it's technically correct to say we've agreed to it as part of the settlement. What has happened is, though Judge Chapman has made a recommendation and we have agreed, in connection with Judge Chapman's recommendation --

THE COURT: Fine.

MR. UZZI: -- we're clear with it the way we have. We have previously --

THE COURT: It's an agreement and it's part of the

mediation.

MR. UZZI: I think that's -- I just -- I don't think the word "agreement" is quite correct, Your Honor, but we will be there tomorrow. Let me just say it that way.

THE COURT: Well, okay. I mean, I think it -- all right, fine.

MR. UZZI: Thank you, Your Honor.

THE COURT: Okay. Ms. Monaghan, do you have anything to add to that?

MS. MONAGHAN: No, Your Honor, I think it's been clarified. I think one of the things that we were concerned about, and the only reason we're raising this point is, we are certainly not planning on cross-examining any of the --

THE COURT: No, this is not evidence for this settlement.

MS. MONAGHAN: And we don't want to be in a position where not having done so implies anything for --

THE COURT: That's fine.

MR. UZZI: And Your Honor, just while I'm on the green, at the end of this hearing if we can just take five minutes to cover maybe some administrative questions for tomorrow?

THE COURT: I'd rather not do that as part of this hearing. If you have administrative questions, you can --

MR. UZZI: We could do it at the beginning of

tomorrow's hearing too. I just want to be --

THE COURT: Okay.

MR. UZZI: That's fine.

THE COURT: Very well. All right, so Mr. Huebner, I interrupted you. Before you finished, I wanted to make sure I understood the role that tomorrow's hearing played in connection with this motion, and I do at this point.

MR. HUEBNER: Sure. I only have two final things to say, then I will for sure be done. Number one, I do want to reiterate that we have a tremendous amount of sympathy for the objectors, the settlement and it's (indiscernible) element. We certainly understand and I've now had this case for four years and three weeks. I understand perfectly well why it raises very painful issues. As I said in the beginning, we wish there were no SOAFs, but as the fiduciary from the estate side, our job is to do the greatest good for the greatest number within the confines of the Bankruptcy Code and our obligations under the federal legal system. In that respect, we just don't think there could be a question that the benefits to the estate that would come with no costs to the estate are just simply enormous and they translate with money and lives.

The final thing I will say, Your Honor, is that the Court is not being asked to like SOAF or approve SOAF or encourage SOAF or anything of the like. The Debtors'

business judgment was not at issue, the Debtors' use of its own funds is not at issue. (indiscernible) Motion 363 and also 105. The Court is asked to do only really one thing with respect to SOAF, which is one, you've already done it, which is confirm that you don't think it violates the preliminary injunction, which again, based on the law of the case and the case settlement, we think has to be the right answer. And two, to conclude that the SOAF does not violate the Bankruptcy Code and I think that the evidence we sent in our papers and as we, sort of, hopefully enhanced the understanding of today, we believe that to be true. That's it, not more but also not less. We do think it's very time sensitive and which we think that every creditor benefits materially. It's the probability of avoiding a potential liquidation and the loss of the Sackler settlement and, even if we ultimately prevail on all issues, a longer trek through the other process of Chapter 11 is avoided by this settlement, in addition to its many, many other benefits that are laid out in the papers. So, with that Your Honor, I have nothing further.

THE COURT: Okay. Thank you. All right. I have before me a motion by the Debtors for an order pursuant to Sections 105 and 363(b) authorizing and approving a settlement term sheet, a copy of which is attached to the motion, that would resolve on the terms and conditions of

the term sheet, the objections of the so-called nine, namely the eight states that appealed confirmation of the Debtors' Chapter 11 Plan and the District of Columbia and in addition, the State of New Hampshire, which objected to confirmation, but did not appeal. And on the other side, the Sackler parties and to a limited extent, the Debtors. The Term Sheet reflects a remarkable and generally very positive development in these cases, which is that, in light of their victory on appeal, the nine entered into a mediation ordered by the Court with the Sackler parties and other parties who the mediator was authorized to add to the mediation in her discretion, to see if their objection to the Plan could be resolved.

That negotiation resulted in an agreement by the Sackler parties to augment their payments in connection with the Plan considerably, depending on their ability to sell assets from a firm amount of a billion dollars to a billion and a half dollars, again, depending on that ability. They also agreed to simply pay $175 million of incremental cash under this settlement in lieu of what had previously been in the Plan, which was to cause the foundations described in the Plan to dedicate $175 million to opioid abatement. There are material non-monetary aspects of the settlement, as well, that are quite important, including Sacklers' agreements as to naming rights for institutions and

organizations in the U.S., rights as to the document repository and what would be in it and the related agreement not stated in the settlement agreement, but recommended by the mediator that victim statements be made to the Court, which are scheduled for tomorrow in the presence of at least one member from each side of the Sackler families.

The agreement also provides for the payment on the same terms and conditions as the payment of the AHC's fees in the case for these settling parties, and it has been represented that roughly $2.5 million has been incurred to date and it is estimated that there will be roughly no more than $2.5 million in the future.

The Agreement also provides for a feature, that, unlike all of those other features -- which are not only not controversial, but welcomed, I believe, by every party in interest in this case except perhaps the United States Trustee -- affect the Court’s determination of this motion, and it has been the centerpiece of the objections to the Motion.

The agreement, if the conditions to it occur, contemplates that, of the additional incremental value to be paid by the Sackler family or the Sackler parties under the Settlement, a portion of that value, namely $276,888,000.87 would not be paid into the so-called NOAT or Master Distribution Trust, which under the Plan then would have

distribution to various recipients of parties for opioid abatement, but rather to a, defined term, SOAF facility for the benefit of the settling states and the District of Columbia in the amount specified in the Agreement, a Supplemental Opioid Abatement Fund. That money, that roughly $277 million, as stated in the settlement term sheet, "shall be devoted exclusively to opioid related abatement, including support and services for survivors, victims and their families, and each member of the nine shall have the right to direct allocation of the SOAF funds for such purposes in the amounts set forth in Attachment D to the Agreement."

If one viewed these funds as property of the estate, as opposed to being paid by the Sacklers, that would change the distribution percentage for the settling parties, depending on the contingencies on payment under the Agreement from what they would be getting under the Plan that is presently on appeal in the Second Circuit, to a plan that would implement the settlement agreement, anywhere from roughly 14 percent to roughly 27 percent after taking into account that some of that money, a fairly large portion of it, roughly $50 million, would have been allocated through the Master Distribution Trust or the NOAT if the SOAF had not been created and all of the additional settlement funds would be run through the NOAT.

As far as the request to me for relief is concerned, the context is quite important. The Court confirmed a Plan that provided for, if you count the $175 million agreement with regard to charitable foundations, $4.5 billion to be contributed by the Sacklers in settlement of both the estate's fraudulent transfer and other estate claims and third-party claims as set forth in the Plan. My order confirming that Plan was reversed on appeal by the District Court on the basis that the Court did not have the power to grant or impose involuntary third-party releases, including, importantly on the so-called nine, that is the settling states and District of Columbia who took the appeal, but also, realistically on the state of New Hampshire which objected to confirmation on that ground. That ruling by the District Court is currently on an expedited appeal process to the Second Circuit. I am not, therefore, being asked now to amend or modify that Plan under Section 1127 of the Bankruptcy Code. The order confirming that Plan was vacated. I don't believe I could be asked to amend or modify that Plan in any event given the divestiture doctrine as set forth in, for example, In re Sabine Oil & Gas Corp. 548 B.R. 674, 679 (Bankr. S.D.N.Y. 2016), and In re Prudential Lines, Inc. 170 B.R. 222, 243 (S.D.N.Y. 1994), and the cases cited therein, since it would clearly overlap such a motion with a pending appeal of the

same Plan except for the amendment.

On the other hand, I'm being asked, instead, to approve the settlement agreement, which in almost all respects except those that I'll list, is conditioned or contingent upon a ruling by the Second Circuit upholding this Court's Confirmation Order and the underlying principle that, under certain limited and constrained circumstances, including as set forth in the Court's decision, the Bankruptcy Court does have the power under the Bankruptcy Code to impose under a plan a release of third-party claims. It is also, since it contemplates, ultimately, modification of the Plan in material ways, contingent and conditioned upon such a motion for modification being granted in the future. The settlement motion before me, the term sheet motion, doesn't seek that relief. It seeks approval of the term sheet, which is ultimately conditioned on obtaining such relief.

What would become effective upon the Court's approval of the motion is the following: the parties to the agreement -- that is, the Sacklers and the nine states and the District of Columbia -- would be bound by the terms of the agreement and its conditions; the nine would withdraw their appeals as set forth on the terms of the settlement agreement and not file their briefs, which are due on Friday; the Debtors and the parties to the agreement would

be authorized to work on the documentation, including in respect of the SOAF and other relatively modest amendments to the Plan contemplated by the Agreement, again, subject to the conditions that I've already set forth, but that work could begin; and the Debtors would be authorized and directed to pay the attorneys' fees, as I previously noted, of the settling parties back in the fashion set forth in the agreement.

The agreement also seeks entry of an order that states, in addition to approving the agreement, subject to its conditions and terms, that the settlement agreement does not contravene any provision of the Bankruptcy Code and that the actions taken by the members of the Sackler families and the nine or the related parties in accordance with the term sheet are taken in connection with the Chapter 11 cases for purposes of Section 10.7 of the Plan, which is including the third-party release provisions. The Debtors also requested that in addition to that provision, they would also state that such Agreement does not contravene any prior order of the Court in these cases. Given that the Court has entered a great number of orders on these cases, I was concerned by that provision, but the Debtors have highlighted, and I think this is something that I did consider, because I did not want to be directing any, or approving any, immediate relief that would not be conditioned upon the Second

Circuit's ruling or Plan confirmation, that the agreement, settlement agreement, that is, does not violate the preliminary injunction that's in effect in this case, and I believe as I stated during oral argument that given the conditions of the settlement agreement and the nature of that preliminary injunction and my prior ruling in respect of the Sackler/DOJ settlement, that in fact the settlement agreement does not contravene the preliminary injunction.

The focus, as I stated, has primarily been by the objectors on the provision in the settlement term sheet for the separate distribution of approximately $276 million of the billion to billion and a half dollars to the SOAF or Supplemental Opioid Abatement Fund. It's understandable that those objections would be raised given the clear record in this case that all of the states and governmental entities, non-federal governmental entities that had previously agreed the allocation of the Sacklers settlement money that would be going, generally, to their class, which is class 4, with a three percent spillover from that class to class 5, the Native-American Tribes Class, on an agreed formula. The SOAF provision of the settlement agreement would vary that formula, and no-one likes prior agreements being varied in that manner. The question for me, however, is, as a settlement in this context, which again is not a context seeking modification of a Plan, but merely a

settlement condition knowing the conditions I've outlined, with the immediate effectiveness that I've also outlined, invalidate or require me to deny the motion?

Those objecting on the basis of the SOAF have raised a number of grounds, asserting that that result should occur. The first is a jurisdictional one, again asserting the so-called divestiture doctrine under the caselaw that I've cited. However, the courts have recognized a distinction in the divestment of jurisdiction when the matter is on appeal and arguably is nevertheless being requested to be heard by the lower court between acts undertaken to enforce the judgment and acts which expand upon or alter it or actions which are simply not before the appellate court. Especially in bankruptcy cases, that distinction is important because there are various aspects of bankruptcy cases that tangentially pertain to matters that may be on appeal but that frankly are quite different and/or may be conditioned on, as here, on the results of such an appeal, as discussed by the Court in In re Prudential Lines.

I conclude that this motion falls into that latter category and not into the category of issues where the divestiture doctrine would divest the Court of jurisdiction. I will note further that Bankruptcy Rule 8008 gives the Court three options where the divestiture doctrine would

apply. In Bankruptcy Rule 8008(a), the Court can (1) defer its ruling until the appellate court rules, it can (2) deny the ruling -- I'm sorry, deny the motion, including on jurisdictional bases, or (3) the Court can state that the Court could grant the motion if the Court where the appeal is pending remanded for that purpose, or state that the motion raises a substantial legal issue. So, the divestiture doctrine in an important respect really doesn't wholly divest the Court of jurisdiction since the Court can give an indicative ruling in any event. But as I've noted, I believe that the doctrine does not apply to this motion, but, rather, to the parties' efforts to resolve these cases promptly. And understandably they want to resolve them promptly given the desire of, I believe, every single party in these cases to distribute funds promptly to individual claimants and to abate the opioid crisis, including providing support and services for survivors, victims and their families. And, again, providing for advanced contingent planning, including with a materially enhanced distribution, is not the same thing as this Court treading on the toes of the appellate court by ruling on issues that are before it.

I am not being asked here, in any way, to rule on the merits of the third-party release issue which is before the Third Circuit -- I'm sorry, before the Second Circuit,

excuse me. So, I conclude that the divestiture doctrine does not apply. I also conclude, and it's really a no-brainer, that I have jurisdiction over this motion, which would, if the conditions to it -- to the settlement agreement -- are fulfilled, would enhance distributions to creditors in these cases by between a little under $900 million and a little under a billion point 4 hundred million dollars. It's frankly laughable that anyone would suggest that the Court doesn't have jurisdiction over something like that where the parties to the agreement have asked for a ruling which seeks authority for them to do the immediate things that the agreement provides for and locks them into the -- locks them in, but not the estate generally, into the other aspects of the agreement in the event the conditions to those performance obligations occur.

This is clearly also not a request for an advisory opinion, given that I'm being asked to approve an agreement that has consequences now as I've already set forth. The settling states and the District of Columbia would withdraw their appeals and not file their appellate briefs, the Court would authorize the Debtors to pay their reasonable attorneys' fees and authorize the Debtors to work on the definitive documentation for the somewhat revised Plan, which would require the occurrence of, going forward, legal expenses, obviously, to be ready in case the conditions to

the major parts of the agreement are actually fulfilled. In that sense, this motion is little different than a motion to approve a plan support agreement, which the courts in this district and elsewhere routinely approve if they represent a reasonable settlement and use of the debtor's funds and/or are appropriately conditioned, as this one is, on, in the case of plan support agreements, confirmation of a plan and approval of a disclosure statement and voting, and in terms of this agreement action by the Second Circuit on the appeal and a motion to modify the Plan to be consistent with the settlement agreement.

I would not approve a settlement agreement or a plan modification agreement if it contemplated a condition that I believed simply was contrary to applicable law. I do not believe, however, that such a problem exists here that would defeat this motion.

It is argued that the settlement agreement would violate section 1127 of the Bankruptcy Code, which incorporates or requires compliance with, among other sections of the Code, section 1123 of the Bankruptcy Code, when one seeks to modify a plan. Section 1123(a)(4) states, "Notwithstanding any otherwise applicable non-bankruptcy law, a plan shall provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable

treatment of such particular claim or interest."

The objectors primarily rest their objections on the contention that this provision would necessarily be violated as a consequence of what is ultimately contemplated by the motion before me in the settlement term sheet, although they understand, and I made it clear to them, that I am not specifically determining that issue in the context of a motion to modify the plan under section 1127 of the Bankruptcy Code.

I've considered that argument carefully, and I separated it from the different argument, which is, I believe, ultimately not a legal argument but an argument that is more applicable outside of this bankruptcy case, as well as one that reflects a change in approach by the nine states and District of Columbia from what they had previously adopted in the case as far as allocations of distributions to the nonfederal government entities classes.

First, section 1123(a)(4) does not apply except in the context of a motion for modification of a plan. It doesn't apply to a motion to approve a settlement agreement like this. Nevertheless, as I've said, and will say now more colloquially, if I believe that the settlement agreement was leading to a plan that couldn't be confirmed or was a pig in a poke, I would not approve the agreement. It's also the case that while Section 1123(a)(4) by its

terms doesn't apply to settlements, the equality of distribution policy of the Bankruptcy Code is a strong one, just as is the absolute priority policy of the Bankruptcy Code, and, therefore, in approving the settlement, I believe a court should consider whether the settlement does real injury to that policy. See Energy Future Holdings Corp. v. Delaware Trust Company, 648 Fed. Appx. 277, 283 (3d Circuit May 4, 2016), cert. denied, 137 S. Ct. 447 (2006), and by analogy, In re Iridium Operating Company, which dealt with the role of the absolute priority rule in considering a settlement. 478 F.3d 452, 466 (2d Cir. 2007).

First, and most importantly, however, the provision itself contemplates that the same treatment requirement can be modified on consent, i.e., it says "unless the holder of a particular claim or interest agrees to a list favorable treatment of such particular claim or interest." It's hard to imagine, although possible, but not by any means a certainty, that the objectors would ultimately turn down the prompt confirmation of a plan that would add an additional roughly 900 million to $1.4 billion of value to be distributed pro rata to their class and would instead take the plan that they had previously agreed to, which would provide for that much less distribution pro rata to their class. But in any event, that is an issue for another day and this motion does not contravene the Code in

leaving it for another day.

In addition to that, the case law construing section 1123(a)(4) has made an important distinction most of the time between payments that are made from the estate or by the estate of property of the estate as defined in section 101 of the Bankruptcy Code and, on the other hand, property that is paid unequally to certain members of the class not from property of the estate but rather by third parties. See, for example In re ICL Holding Company Inc., 802 F.3d 547, 555-56 (3d Cir. 2015) and In re Source Enterprises Inc., 392 B.R. 541 (S.D.N.Y. 2008), the discussion there beginning at page 556 and going through 557 by District Judge Stein.

Two cases I think highlight this distinction, first Czyzewski v. Jevic Holding Corp., 137 S. Ct. 973 (2006), where clearly Justice Breyer's opinion refers to the distribution of estate assets and the court not being permitted to vary as part of the settlement, in that case a settlement as part of a dismissal-of-the-case order that would vary the absolute priority rule. A similar result and a similar distinction between estate property and non-estate property can be found in In re DBSD North America Inc., 634 F.3d. 78, 98 (2d Cir. 2011).

Courts that have more closely looked at the 1123(a)(4) issue in a plan context have also reached this

result, most recently in In re Mallinckrodt, PLC, 2022 Bankr. LEXIS 273, at pages 26 through 30 (Bankr. D. Del. February 3, 2022), where it noted that the settlement money that was being paid to those settling within the class was being paid by third parties, insurers of the third parties, rather, and therefore, would not implicate the 1123(a)(4) provision.

Courts have noted some uncertainty in the case law as to that meaning of 1123(a)(4). The plain terms are, again, that a plan must provide the same treatment for each claim or interest of a particular class, again with the proviso that the claimant can vary that requirement. But as discussed by Judge Scheindlin in ACC Bondholders Group v. Adelphia Communications Corp. (In re Adelphia Communications Corp.), 361 B.R. 337 (S.D.N.Y. 2007), there is at least a question, at least there was then in the District Court's mind in 2007 when considering whether it should enter an order staying the effective date of the plan in Adelphia pending appeal, as to whether that provision applies to the treatment of claims as the plain language states or of claimants which, if it were "claimants" would include not only money received by the estate but on account of non-estate money as well. Again, that second interpretation is contrary to the plain terms of the statute, which refers to a class of claims or interests.

I guess a couple of other remarks are worth making. The courts have long recognized that 1123(a)(4) is not violated if someone is getting different treatment not on account of its claim but for some other distinct purpose, such as, in In re Peabody Energy Company, agreeing to subscribe to a rights offering. 923 F.3d, 918, 925 (8th Cir. 2019). Finally, courts have also long recognized that if some parties take a settlement and others don't, but they each have the opportunity to do so, those that take the settlement or those that don't are not getting disparate treatment in violation of section 1123(a)(4). That includes, for example as set forth in the Energy Future case, a settlement from the debtor's estate. Here, the settlement would be from -- the Debtors have argued and I think pretty convincingly, although the issue is not definitively before me -- that the settlement is coming from non-estate funds for a non-estate claim, i.e. the claim that is the subject of the appeal before the Second Circuit which would be withdrawn upon my approval of this motion, namely that the Court does not have the power to force a third-party release on appellants -- I'm sorry, the appellees, excuse me. However, now they are agreeing to accept this payment in addition to directing the remaining amounts or agreeing that the remaining amounts would go into the estate as set forth in the settlement term sheet.

I think it could well be argued that all of those who supported the Plan, starting with the Debtors in respect to their own estate claims and those who did not object to the Plan, did not appeal the plan, and/or support the plan had previously settled their third-party claims under the Plan. They had the opportunity not to do so, to take the risk that the settling parties took that they would get nothing by defeating the Plan. They decided not to take that risk, which clearly the vast majority of parties in interest agreed was too great a risk; but it is hard for me to see that they should be able to complain now under the foregoing case law that those who did take that risk and are not reducing the recovery from the estate to anyone -- in fact are agreeing that well over 70 percent of the added recoveries would go to the estate -- should be denied under 1123(a)(4) the additional percentage they would be getting under the SOAF.

So, for those reasons I do not believe that the settlement agreement and the relief sought in this motion contravene the Bankruptcy Code.

I also believe that the settlement agreement is not a sub rosa plan, that is, a plan -- that is, an agreement that dictates by its terms the terms of a plan without following the requirements of plan confirmation. By its terms, except for the limited performance obligations

that I've already outlined, the plan -- the settlement agreement is, in fact, or does, in fact, require modification of the plan in compliance with 1129 -- I'm sorry, section 1127 for a modification as well as, of course, a favorable ruling by the Second Circuit. It therefore complies as a building block for a plan like an acceptable plan support agreement rather than being a disguised or a sub rosa plan. It is in fact the contingency to the agreement that actually keeps it from being a sub rosa plan and instead being simply an important, in fact remarkable, building block for a plan. See In re Tower Auto Inc., 342 B.R. 158, 163 (Bankr. S.D.N.Y. 2006).

Certain objectors have objected to the payment of professional fees, which is one of the immediate effects of my granting the motion, along the lines that I've already described. I note, as have the objectors, that the motion does not seek approval of the payment under section 503(b)(3) or (b)(4) of the Bankruptcy Code, by the so-called substantial contribution provision of the Code, and have contended that's the only provision under which these fees can be paid. I have already ruled on this issue not only in the confirmation opinion but also earlier in the case in authorizing the fees for key ad hoc committees.

I do not believe the Code section itself limits the power under section 363(b) to seek payment of such fees

under appropriate circumstances. The case cited for that proposition is a much more narrow holding, I believe, the Lehman Brothers case, which dealt with payment of committee expenses which were specifically dealt with as not being authorized by the statutory provision.

It seems to me that there is important work to be done on the documentation of the SOAF, as discussed on the record and more flesh to be put on the bones of the commitment, which is a critical one, by the settling states and the District of Columbia that the funds for the SOAF will be used for opioid abatement and victim purposes. And that is the type of work that the courts have recognized is warranted for payment under section 363(b), including in the Bethlehem Steel case that both sides discussed.

Moreover, given the extraordinary result obtained here in light of the leverage obtained by the nine then appellants, now appellees, in respect of the Plan, it's almost impossible for me to conceive that they would not be entitled to a substantial contribution award for those services, which would obviously precede the services that I've just described for the documentation and the like. The enhancement of the estate by somewhere between roughly $900 million and $1.4 billion is an extraordinary enhancement of value for all stakeholders and clearly fits within the case law that would award a substantial contribution award for

that. See In re McLean Industries, Inc., 88 B.R. 36, 38-39 (Bankr. S.D.N.Y. 1988).

I would also note that the amounts that we are talking about here are minuscule in relation to the benefit to the estate resulting from the funds that are coming into the estate or would come into the estate if the conditions to the settlement agreement were fulfilled, namely somewhere between roughly 2-1/2 million incurred and the estimated additional 2 to 2-1/2 million that may be incurred going forward.

I believe that those objections that dealt with or sought clarification of the term sheet, particularly the one by the Canadian municipalities and First Nations, have been appropriately dealt with.

I will turn then to the objections by others, either pro se individuals or in two cases, people who were represented by counsel. To the extent that those objections raised the 1123(a)(4) issue, those objections to the extent that those objectors were not in Classes 4 or 5, would not have standing to make such an objection because they would not be affected in the class to which the 1123(a)(4) issue would apply. See 1199 SEIU National Benefit Fund v. Akorn Inc. (In re Akorn, Inc.), 2021 U.S. Dist. LEXIS 180788, at page 33 (D. Del. September 22, 2021). See generally Kane v. Johns-Manville Corp., 843 F.2d 636, 643 (2d Cir. 1988). See

also 7 Collier on Bankruptcy, Paragraph 1123.01[4][b].

Certain of objectors also contend that this extra money negotiated by the states and the District of Columbia should not be going to Class 4 and 5 through the NOAT or to the nine states and the District of Columbia through the SOAF, but, rather, at least some portion or all of it, depending on the objection, should go to individuals who have personal injury claims, under the Plan. The case law is quite clear that if and when one gets to a hearing on a modification of the Plan under section 1127 of the Bankruptcy Code, those who are not materially and adversely affected by a plan modification did not have the right to vote on that modification or object to it because their treatment is not changed for the worse.

It was quite important to me from the start of the mediation that the nine, so-called, would not take value from the estate that had been allocated to other parties including, specifically, personal injury claimants. The record is clear from today that they are not taking value for personal injury claimants and that the personal injury claimants' distributions under the Plan that had been confirmed would not change as a result of this settlement if the conditions to the effectiveness of the settlement, namely affirmance by the Second Circuit and confirmation of a modified Plan, would occur. Therefore, I believe that the

settlement does not contravene any rights that those parties would have to the distributions they would be getting under the Plan, that the Second Circuit would uphold as a condition, of course, to this settlement, and are no worse off.

Indeed, given the use of the funds for abatement, including for victims and their families, and the multiplier effect that I previously found of the use of such funds, one would argue that although the funds would not be distributed necessarily directly to victims as part of a claim process, there would be an enhanced benefit to the victims from such additional monies being dedicated to services.

And again, an important agreement by the settling states and the District of Columbia, which they did not have to agree to and is not any requirement of the Bankruptcy Code, is that they would use the money, the SOAF money for abatement and treatment purposes as I previously quoted, which is an extremely important and I think original commitment in these cases starting with the very beginning of these cases and already embodied in the NOAT and the principles of the plan.

So, I conclude that as a settlement the settlement satisfies the factors laid out by the Second Circuit in In re Iridium Operating, LLC, 478 F.3d. at page 465, and, in fact, those factors have really not been challenged, i.e.

the assessment of the merits, and that's I think explicable. The Debtor is not giving up anything more as a result of the settlement. It is getting, instead, substantial monetary value and nonmonetary value in agreements from the Sacklers. And this settlement is in compliance with applicable law which is the one Iridium factor that has been focused on as opposed to the others dealing with the balance of the litigation's possibility of success, future benefits of the settlement, the likelihood of protracted litigation, expense and inconvenience of delay, the paramount interest of creditors, whether other parties in interest support the settlement, the competence and experience of counsel supporting the settlement, etc., and whether the settlement is the product of arms-length bargaining, are all satisfied here.

And I will reiterate that it is clear to me from reading every Mediator's Report on this mediation, as well as the reports on the prior mediation that she conducted, these were some of the most difficult arms-length negotiations any mediator has ever conducted. So, those factors are all satisfied.

The settlement's compliance with either the Code itself or underlying principles of the Bankruptcy Code, namely the principle of equality of distribution I have already addressed. So, it appears to me that under the

Second Circuit law as enunciated by the court in Iridium, the settlement should be approved.

There is certainly a proper business justification for locking in these parties, including the Sacklers, to the terms of the settlement subject to its conditions and for the Debtor to take the relatively modest steps for which they are seeking authorization now to enable the next step if the Second Circuit fulfills the condition of this settlement and proposes and seeks approval of the modification of the plan consistent with the settlement.

So Mr. Huebner, you can submit the order. I think the one change would be the reference to "consistent with all the orders I have entered in the case." You can change that to the plan -- "the preliminary injunction order."

MR. HUEBNER: Your Honor, thank you very much. Two very small things from this end. One, only because I think the transcript is going to constitute the Court's ruling, with huge apologies, I believe the Court made multiple references to 1123(a)(4) when you meant 1123(a)(4).

THE COURT: Yes, yes.

MR. HUEBNER: And just so that the record is clear, I assume that is what the Court intended?

THE COURT: Of course, you're right. Thank you for catching that. I will read the transcript. I will correct typos or sics and things like that in it, but you

are absolutely right. Those references were to 1123(a)(4), as incorporated by 1127.

MR. HUEBNER: The second thing, Your Honor, there actually is a mistake in the order that I want to call to the Court's attention and ask for permission to change which is the term sheet with respect to the payment of the fees, the term sheet requires, in the section called "Additional Terms," that we move promptly to get the payments of the legal fees authorized subject to the procedures. Paragraph 4 of the order contains an additional clause that says "upon consummation of the plan as enhanced by the term sheet," that's actually not the business deal.

THE COURT: Right.

MR. HUEBNER: That's just a mistake in the order.

THE COURT: You're right. And I didn't, I assumed that the business deal, as I stated during my ruling, was that aspect of the term sheet would become operative.

MR. HUEBNER: Correct. So we'll delete. It goes without saying we have been working very, very quickly here on many fronts. We would like to thank, obviously, the Court, the mediator and frankly all the objectors. I will say it one last time, we much more than understand where many people are coming from and this is hard, but it is in the estate's best interest.

We are back on tomorrow morning at 10 a.m. for an

equally, and maybe even more important, time before Your Honor when the victims will have their opportunity, as shepherded by the UCC, to have their voices heard.

THE COURT: Right. And I would say as far as tomorrow is concerned that I gladly took up Judge Chapman's recommendation in her last Mediation Report to hear victims with Sackler family members present. I also agreed with her that those should be the victims' statements. No one should be commenting on them. Therefore, the people who are harmed by OxyContin are to speak and I don't expect comments from anyone.

I also want to reiterate that these are statements in federal court, and because of health concerns, we're doing it remotely. I wish we could do it in person but I have a small courtroom and it just wouldn't work, but we will be on Zoom. But, we will still be in a federal court, and I expect people -- and I don’t doubt that this will be the case -- to act as one would act in a federal court. Obviously these are very serious statements, and I wouldn't expect anything less than that in light of that and the courage with which people are speaking.

It goes without saying, and yet I will say it because it's important, that people are not allowed to photograph what goes on in federal court. You are not allowed to tape what's going on in federal court or live

stream what's going on in federal court. There are important security reasons for that, including cybersecurity reasons. It is something that would subject anyone who would do those sorts of things to serious liability.

So this is, I hope you'll understand this, one-on-one communication and it's important one-on-one communication. So I look forward to it tomorrow.

(Whereupon these proceedings were concluded at 5:25 P.M.)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: March 18, 2022

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